

2-7-2014

State v. Arrotta Clerk's Record v. 1 Dckt. 41632

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Vol. 1 of 1
IN THE SUPREME COURT

OF THE

LAW CLERK

STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Appellant,

vs.

DEREK MICHAEL ARROTTA,

Defendant-Respondent.

Appealed from the District Court of the Second
Judicial District of the State of Idaho, in
and for the County of Latah

HONORABLE JOHN R. STEGNER, DISTRICT JUDGE

KENNETH K. JORGENSEN

ATTORNEY FOR APPELLANT

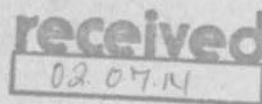
DOUGLAS D. PHELPS

ATTORNEY FOR RESPONDENT

Filed this ____ day of _____, 2013.

STEPHEN W. KENYON, CLERK

By _____
Deputy



SUPREME COURT CASE NO. 41632-2013

VOLUME I OF I VOLUME

41632

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
	)	SUPREME COURT NO. 41632-2013
Plaintiff-Appellant,)	
)	
v.)	
)	
DEREK MICHAEL ARROTTA,)	
)	
Defendant-Respondent.)	
_____)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Second Judicial District of the State of Idaho,
in and for the County of Latah

HONORABLE JOHN R. STEGNER
District Judge

DOUGLAS D. PHELPS
ATTORNEY AT LAW
2903 NORTH STOUT ROAD
SPOKANE, WA 99206-0802

ATTORNEY FOR RESPONDENT

KENNETH K. JORGENSEN
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 83720
BOISE, ID 83720-0010

ATTORNEY FOR APPELLANT

000001

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State of Idaho vs. Derek Michael Arrotta

Date	Code	User		Judge
12/10/2012	NCRM	CHARLOTTE	New Case Filed - Misdemeanor	John C. Judge
	PROS	CHARLOTTE	Prosecutor assigned William W. Thompson Jr.	John C. Judge
	AFPC	CHARLOTTE	Affidavit Of Probable Cause	John C. Judge
	ALSN	CHARLOTTE	Administrative License Suspension Notice And Temporary Permit	John C. Judge
	BNDC	CHARLOTTE	Bond Posted - Cash (Receipt 200063 Dated 12/10/2012 for 500.00)	John C. Judge
	CBIS	CHARLOTTE	Cash Bond Information Sheet	John C. Judge
	ARRN	CHARLOTTE	Arraignment / First Appearance	John C. Judge
	APNG	CHARLOTTE	Appear & Plead Not Guilty	John C. Judge
	PLEA	CHARLOTTE	A Plea is entered for charge: - NG (118-8004(1)(a) {M} Driving Under the Influence)	John C. Judge
	HRSC	CHARLOTTE	Hearing Scheduled (Pretrial Conference 01/08/2013 10:00 AM)	John C. Judge
12/17/2012	APER	JAN	Defendant: Arrotta, Derek Michael Appearance Douglas D Phelps	John C. Judge
	NOAP	JAN	Notice Of Appearance	John C. Judge
	PTMN	JAN	Pre-trial Motions	John C. Judge
	RQDS	JAN	Request For Discovery	John C. Judge
	REQU	JAN	Request For BAC License Suspension Hearing	John C. Judge
	HRSC	JAN	Hearing Scheduled (Motion to Suppress 01/08/2013 02:30 PM)	John C. Judge
		JAN	Notice Of Hearing	John C. Judge
12/24/2012	RSRD	RANAE	Response To Request For Discovery	John C. Judge
1/3/2013	RSPN	JAN	Response to Defendant's Motion to Suppress	John C. Judge
1/8/2013	CONT	CHARLOTTE	Hearing result for Pretrial Conference scheduled on 01/08/2013 10:00 AM: Continued	John C. Judge
	HRSC	CHARLOTTE	Hearing Scheduled (Pretrial Conference 02/19/2013 10:00 AM)	John C. Judge
	HRVC	CHARLOTTE	Hearing result for Motion to Suppress scheduled on 01/08/2013 02:30 PM: Hearing Vacated	John C. Judge
	PTMN	CHARLOTTE	Pre-trial Motion	John C. Judge
1/14/2013	WAIV	JAN	Waiver Of Right To Speedy Trial	John C. Judge
2/15/2013	PTMC	JAN	PRE TRIAL MOTION CONTINUING HEARING	John C. Judge
	CONT	JAN	Hearing result for Pretrial Conference scheduled on 02/19/2013 10:00 AM: Continued	John C. Judge
	HRSC	JAN	Hearing Scheduled (Pretrial Conference 03/12/2013 10:00 AM)	John C. Judge
2/25/2013	MOSP	JAN	Motion To Suppress Blood Draw Without Warrant	John C. Judge
2/26/2013	HRSC	JAN	Hearing Scheduled (Motion to Suppress 04/02/2013 02:30 PM)	John C. Judge

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State of Idaho vs. Derek Michael Arrotta

Date	Code	User		Judge
2/26/2013		JAN	Notice Of Hearing	John C. Judge
3/8/2013	RSPN	RANAE	Response to Defendant's Motion to Suppress	John C. Judge
3/11/2013	SUBR	JAN	Subpoena Returned - CLINT BALDWIN	John C. Judge
4/1/2013	MOCT	CHARLOTTE	Motion To Continue	John C. Judge
4/2/2013	HRHD	CHARLOTTE	Hearing result for Pretrial Conference scheduled on 03/12/2013 10:00 AM: Hearing Held	John C. Judge
	CONT	CHARLOTTE	Hearing result for Motion to Suppress scheduled on 04/02/2013 02:30 PM: Continued	John C. Judge
	HRSC	CHARLOTTE	Hearing Scheduled (Motion to Suppress 05/01/2013 02:30 PM)	John C. Judge
	ORCO	CHARLOTTE	Order To Continue	John C. Judge
	SUBR	BETH	Subpoena Returned- Clint Baldwin	John C. Judge
4/30/2013	CONT	JAN	Hearing result for Motion to Suppress scheduled on 05/01/2013 02:30 PM: Continued	John C. Judge
	HRSC	JAN	Hearing Scheduled (Motion to Suppress 06/06/2013 02:30 PM)	John C. Judge
	STIP	JAN	STIPULATION TO CONTINUE	John C. Judge
	ORDR	JAN	ORDER TO CONTINUE	John C. Judge
5/2/2013	SUBR	BETH	Subpoena Returned - Baldwin	John C. Judge
6/3/2013	BREF	JAN	Defendant's reply brief in support of motion to suppress	John C. Judge
6/6/2013	HRHD	MAGGIE	Hearing result for Motion to Suppress scheduled on 06/06/2013 02:30 PM: Hearing Held	John C. Judge
6/7/2013	HRSC	JAN	Hearing Scheduled (Pretrial Conference 06/11/2013 11:00 AM)	John C. Judge
6/11/2013	ORDR	MAGGIE	Order suppressing blood test results	John C. Judge
	HRHD	JAN	Hearing result for Pretrial Conference scheduled on 06/11/2013 11:00 AM: Hearing Held	John C. Judge
	HRSC	JAN	Hearing Scheduled (Attention 06/21/2013 05:00 PM) HAS APPEAL BEEN FILED BY STATE??	John C. Judge
6/12/2013	NOTA	RANAE	NOTICE OF APPEAL	John C. Judge
	CHJG	MAUREEN	Change Assigned Judge	John R. Stegner
6/14/2013	TRAN	TERRY	Transcript of Suppression Hearing	John C. Judge
6/19/2013	NOTC	TERRY	Notice of Lodging of Transcript	John C. Judge
7/1/2013	MISC	JAN	PROPOSED CORRECTIONS TO TRANSCRIPT OF SUPPRESSION HEARING	John C. Judge
7/11/2013	NOTC	JAN	NOTICE OF NO OBJECTION TO PROPOSED CORRECTIONS TO TRANSCRIPT OF SUPPRESSION HEARING	John C. Judge
	ORDR	TERRY	Order on Appeal	John C. Judge
	HRSC	TERRY	Hearing Scheduled (Appellate Argument 10/07/2013 10:00 AM)	John R. Stegner

000007

Date: 12/31/2013

Sec Judicial District Court - Latah County

User: RANAE

Time: 10:04 AM

ROA Report

Page 3 of 3

Case: CR-2012-0004156 Current Judge: John R. Stegner

Defendant: Arrotta, Derek Michael

State of Idaho vs. Derek Michael Arrotta

Date	Code	User		Judge
8/13/2013	BREF	RANAE	Appellant's Brief	John C. Judge
9/10/2013	BREF	BETH	Respondent's Brief	John C. Judge
9/13/2013	BREF	BETH	Appellant's Reply Brief	John C. Judge
10/7/2013	DCHH	TERRY	Hearing result for Appellate Argument scheduled on 10/07/2013 10:00 AM: District Court Hearing Held Court Reporter: Sheryl L. Engler Number of Transcript Pages for this hearing estimated: less than 75 pages	John R. Stegner
	CTMN	TERRY	Hearing result for Appellate Argument scheduled on 10/07/2013 10:00 AM: Court Minutes	John R. Stegner
10/31/2013	OPIN	TERRY	Memorandum Opinion	John R. Stegner
11/18/2013	NAPL	RANAE	Notice Of Appeal	John R. Stegner

000008

Idaho State Police - Uniform Citation

In the court designated below the undersigned certifies that he/she has just and reasonable grounds to believe and does believe that on:

Citation #:

ISP0186458

DR#: L12000945

Date/Time: 12/08/2012 03:14 AM

IN THE DISTRICT COURT OF THE 2ND
JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF LATAH
STATE OF IDAHO

CR202-4156

VIOLATOR

Last Name: ARROTTA

MI: M

First Name: DEREK

DOB: [REDACTED]

Hm. Address: 15324 E 13TH AVE

Phone:

Cty, St, Zip: SPOKANE VALLEY, WA 9903797640

Height: 601 Weight: 175 Sex: M Eyes: BLU Hair: BRO

DL#: ARROTTM101J3 DL State: WA Lic. Expires: 2016

Class: OPERATOR

Hazmat: N GVWR 26001+: N 16+ Persons: N

Commercial vehicle driven by this driver: N

Bus. Name:

Bus. Addr:

Bus. Phone:

REGISTRATION

Yr. Veh: 1998

Veh. Lic #: K501684

State: ID

Make: FORD

Model: TAURUS

Color: WHI

Style: 4D

VIN: 1FAFP52U8WG132741

Carrier US DOT #:

LOCATION

Upon a Public Street or Highway or Other Location Namely:

S. MAIN NEAR LEWIS ST IN MOSCOW

VIOLATIONS

Did commit the following Offense(s), In violation of State Statute,

Infraction Citation: N

Misdemeanor Citation: Y

Posted Speed:

Observed Speed:

Accident: N

Date/Time: 12/08/2012 01:54 AM

Violation #1: 118-8004(1)(a) {M}

DRIVING UNDER THE INFLUENCE; REFUSED BREATH; BLOOD
DRAW PENDING

Violation #2:

Violation #3:

Violation #4:

COURT INFORMATION

LATAH COUNTY MAGISTRATE COURT

522 SOUTH ADAMS RM 119

MOSCOW, ID 83843-0568

(208) 883-2255

Court Date: 12/10/2012

Court Time: 08:30 AM

Fine #1: MUST APPEAR

Fine #2:

Fine #3:

Fine #4:

SIGNATURE

I hereby certify service upon the defendant personally on 12/08/2012

Signature of Officer:

Officer Name: C BALDWIN

Officer ID: 3113

Agency Name: IDAHO STATE POLICE

Witness:

Address:

Department:

Serial #:

OFFICER NOTES

READ CAREFULLY

This is a MISDEMEANOR charge in which:

NOTE: If you fail to appear within the time allowed for your appearance, another charge of failure to appear may be filed and a warrant may be issued for your arrest.

1. You may be represented by a lawyer, which will be at your expense unless the judge finds you are indigent.
2. You are entitled to a trial by jury if requested by you.
3. PLEA OF NOT GUILTY: You may plead not guilty to the charge by appearing before the clerk of the court or the judge, within the time allowed for your appearance, at which time you will be given a trial date.
4. PLEA OF GUILTY: You may plead guilty to the charge by going to the clerk of the court, within the time allowed for your appearance, at which time you will be told if you can pay a fixed fine or whether it will be necessary for you to appear before the judge;
OR
You may have your fine determined by a judge at a time arranged with the clerk of the court, within the time allowed for your appearance.
5. You may call the clerk of the court to determine if you can sign a plea of guilty and pay the fine and costs by mail.

I plead guilty to the charges.

Defendant (if authorized by clerk of magistrate court)

MAIL TO:

LATAH COUNTY MAGISTRATE COURT

PO BOX 8068

MOSCOW, ID 83843-0568

000009

IN THE DISTRICT COURT OF THE 2ND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

CASE NO. CR2012-4156

AM 8:15

CLERK OF DISTRICT COURT
LATAH COUNTY
BY cm DEPUTY

THE STATE OF IDAHO,
Plaintiff,

COURT CASE NUMBER _____
PROBABLE CAUSE AFFIDAVIT IN SUPPORT
OF ARREST AND/OR REFUSAL TO TAKE TEST

ARROTTA, Derek M.
Defendant.

DOB [REDACTED]
SSN/DL: [REDACTED]
State: Washington

State of Idaho,

County of **LATAH**,

I, **Corporal Clint A. Baldwin** the undersigned, being first duly sworn on oath, deposes and says that:

1. I am a peace officer employed by the Idaho State Police.
2. The defendant was arrested on **December 8, 2012** at **0231** hours for the crime of **driving while under the influence of alcohol, drugs, or any other intoxicating substances pursuant to Idaho code section 18-8004**. Second or more DUI offense in the last ten years? **No - Misdemeanor**
Other Offenses:

3. Location of Occurrence: **Southbound on S. Main St near Lewis St, in Moscow, Latah County**

4. Identified the defendant as: **ARROTTA, Derek M.** by: **Driver's License**

5. Actual physical control established by: **Observation By Affiant**

6. I believe that there is probable cause to believe the defendant committed such crime because of the following facts:

(NOTE: You must state the source of all information provided below. State what you observed and what you learned from someone else, identifying that person):

PROBABLE CAUSE FOR STOP AND ARREST:

On December 8, 2012, at approximately 0154 hours, I, Corporal Clint A. Baldwin of the Idaho State Police, stopped a white Ford Taurus (Idaho registration K501684) southbound on S. Main Street near Lewis Street, in Moscow, Latah County, for an obstructed rear window (almost completely covered by snow/ice/frost). I could smell the strong odor of an alcoholic beverage coming from the Ford. I noticed the driver's eyes were glassy and bloodshot in appearance, and when he spoke his speech was somewhat slurred. The driver identified himself as Derek M. ARROTTA (DOB [REDACTED]) with his Washington Driver's License. ARROTTA admitted to consuming alcohol prior to driving. After running a driver's check, I asked ARROTTA to exit the Ford to perform the standardized field sobriety evaluations. ARROTTA performed and met the decision points each of the three evaluations administered (see attached copy of the Influence Report form). After listening to the ALS advisory and after the mandatory fifteen minute waiting period, ARROTTA refused to submit to a breath test. I arrested ARROTTA for DUI and transported him to Gritman Medical Center where a blood draw was conducted by Med Tech Teresa Smith. I transported ARROTTA to the Latah County Jail where he was booked in for driving while under the influence of alcohol, drugs, or any other intoxicating substances pursuant to Idaho code section 18-8004.

DVD: 224-222

D.U. I. NOTES

Odor of alcoholic beverage: **Yes**
Admitted drinking alcoholic beverage: **Yes**
Slurred speech: **Yes**
Impaired memory: **Yes**
Glassy/bloodshot eyes: **Yes**

Sobriety Tests—Meets Decision Points?

Gaze Nystagmus: **Yes**
Walk & Turn: **Yes**
One Leg Stand: **Yes**

Crash Involved: **No** Injury: **No**

Other:

Drugs Suspected: **No** Drug Recognition Evaluation Performed: **No**
Reason Drugs are Suspected:

Prior to being offered the test, the defendant was substantially informed of the consequences of refusal and failure of the test as required by Section 18-8002 and 18-8002A, Idaho Code.

Defendant was tested for alcohol concentration, drugs or other intoxicating substances. The test(s) was/were performed in compliance with Section 18-8003 & 18-8004 (4), Idaho Code, and the standards and methods adopted by the Department of Law Enforcement.

BAC: Blood and/or Urine Test Results Pending.

Videotape # 224-222

By my signature and in the presence of a person authorized to administer Oaths in the State of Idaho, I hereby solemnly swear that the information contained in this document and attached reports and documents that may be included herein is true and correct to the best of my information and belief.

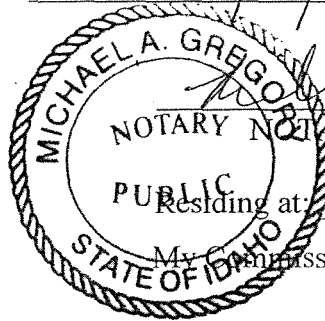
Signed: _____

(affiant)

Subscribed and sworn to me on _____

12/8/12

(Date)



Residing at: _____

Moscow, Idaho

My Commission expires: _____

01/28/2015

ORDER

Based upon the above Affidavit, the Court hereby finds that there is Probable Cause to believe that a crime ~~or crimes~~ has been committed, and that the Defendant committed said crime or crimes.

Dated this 9th day of Dec, 2012, at 4:51 ^{PM} hours.

MAGISTRATE

PARVIEW
MICHAEL GREGORY
12-8-12 e 3:24 PM

Idaho State Police
INFLUENCE REPORT

C-12.000945

Defendant's Name Arrotta, Derek M. DOB [REDACTED]

Contacts ☐ Yes ☒ No Glasses ☐ Yes ☒ No Remove Glasses ☐

Eyes tracking equally ☒ Yes ☐ No

HORIZONTAL GAZE NYSTAGMUS

EYES

- L R
- ☒ ☒ Eye does not pursue smoothly
- ☒ ☒ Distinct Nystagmus at max. deviation
- ☒ ☒ Nystagmus onset before 45 degrees

☐ 60 TOTAL

ADDITIONAL SOBRIETY TESTS

VERTICAL NYSTAGMUS

☒ Yes ☐ No

PUPIL SIZE same CONSTRICTED ☐ NORMAL ☐ DILATED ☒

WALK AND TURN

- ☒ Cannot keep balance during instructions
- ☐ Starts too soon
- ☐ Stops too soon
- ☒ Misses heel to toe
- ☒ Steps off line
- ☐ Raises arms
- ☐ Wrong number of steps
- ☒ Improper turn
- ☐ Cannot do test
- ☐ 4 Total

NYSTAGMUS

	0	1	2	3	4	5	6
0							
1							
2							
3							
4							
5							
6							
7							
8							

WALK
AND
TURN

OBSERVATIONS

Eye Color blue Eye Condition glassy + bloodshot Speech slightly slurred

Breath strong odor of an alcoholic beverage

Foot Wear walking boots Ground Surface level, snow/ice covered pavement

ONE LEG STAND

- ☒ Sways
- ☒ Raises arms
- ☐ Hops
- ☐ Puts foot down
- ☐ Cannot do test
- ☐ 2 Total

CHEMICAL TEST

☐ Breath ☒ Blood

☐ Other Test Result Pending

☐ Refused test, Why? _____

Audio Tape Y ☒ N

Video Tape ☒ Y N

Officer's Signature Cpl. Claitor Date 12/8/12

000013



Notice of Suspension for Failure of Evidentiary Testing

(Advisory for Sections 18-8002 and 18-8002A, Idaho Code)

DR# L2000945

Issued To:

Arrotta Derek M
Last Name First Middle Date of Birth
15324 E. 13th Ave
Mailing Address
Spokane Valley WA 99037
City State Zip

Latah CASE NO. 12/8/12 0751
Date of Arrest Time of Arrest
5 WA OP
State License Class
ISP0186458 Operating CMV? ☐ Yes ☒ No
Citation # LATAH COUNTY Transporting Hazmat? ☐ Yes ☒ No

Suspension Advisory

- I have reasonable grounds to believe that you were driving or were in physical control of a motor vehicle while under the influence of alcohol, drugs, or other intoxicating substances. You are required by law to take one or more evidentiary test(s) to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in your body. After submitting to the test(s) you may, when practical, at your own expense, have additional test(s) made by a person of your own choosing. You do not have the right to talk to a lawyer before taking any evidentiary test(s) to determine the alcohol concentration or presence of drugs or other intoxicating substances in your body.
- If you refuse to take or complete any of the offered tests pursuant to Section 18-8002, Idaho Code:
 - You are subject to a civil penalty of two hundred fifty dollars (\$250).
 - You have the right to submit a written request within seven (7) days to the **Magistrate Court of Latah County** for a hearing to show cause why you refused to submit to or complete evidentiary testing and why your driver's license should not be suspended.
 - If you do not request a hearing or do not prevail at the hearing, the court will sustain the civil penalty and your license will be suspended with absolutely no driving privileges for one (1) year if this is your first refusal; and two (2) years if this is your second refusal within ten (10) years.
- If you take and fail the evidentiary test(s) pursuant to Section 18-8002A, Idaho Code:
 - I will serve you with this **NOTICE OF SUSPENSION** that becomes effective thirty (30) days from the **date of service** on this notice suspending your driver's license or driving privileges. If this is your first failure of an evidentiary test within the last five (5) years, your driver's license or driving privileges will be suspended for ninety (90) days with absolutely no driving privileges of any kind during the first thirty (30) days. You may request restricted non-commercial driving privileges for the remaining sixty (60) days of the suspension. Restricted driving privileges will not allow you to operate a commercial motor vehicle. If this is not your first failure of an evidentiary test within the last five (5) years, your driver's license or driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind during that period.
 - You have the right to an administrative hearing on the suspension before the **Idaho Transportation Department** to show cause why you failed the evidentiary test and why your driver's license should not be suspended. The request must be made in writing and received by the department within seven (7) calendar days from the **date of service** on this **NOTICE OF SUSPENSION**. You also have the right to judicial review of the Hearing Officer's decision.
- If you are admitted to a problem solving court program and have served at least forty-five (45) days of an absolute suspension of driving privileges, you may be eligible for a restricted permit for the purpose of getting to and from work, school, or an alcohol treatment program.

NOTICE OF SUSPENSION If you have failed the evidentiary test(s), your driving privileges are hereby suspended per #3 above, commencing thirty (30) days from the date of service on this notice. If a blood or urine test was administered, the department may serve a *Notice of Suspension* upon receipt of the test results.

Date of Service:

This Suspension for Failure or Refusal of the Evidentiary Test(s) is separate from any other Suspension ordered by the Court. Please refer to the back of this Suspension Notice for more information.

Signature of Reporting Officer <u>Cpl. Clint A. Baldwin</u>	Print Name and I.D. Number of Reporting Officer <u>Cpl. Clint A. Baldwin 3113</u>	Agency Code <u>0002</u>	Telephone Number <u>799-5151</u>
--	--	----------------------------	-------------------------------------

Department use only Failure: ☐ Breath ☒ Urine/Blood ☐ Refusal

White Copy - If failure - to ITD; if refusal - to Court

Yellow Copy - to Law Enforcement

Pink Copy - to Court

Goldenrod Copy - to Driver

000014

Suspension Inform

The audio version of the Suspension Advisory substantially conforms to the written text of the Suspension Advisory.

For Refusal of Evidentiary Testing (Pursuant to Section 18-8002, Idaho Code)

You have the right to submit a written request within seven (7) days to the Magistrate Court indicated on the face of this notice for a hearing to show cause why you refused to submit to or complete evidentiary testing. This is your opportunity to show cause why you refused to submit or failed to complete evidentiary testing and why your driver's license should not be suspended. **Note:** A hearing request for refusing evidentiary testing must be submitted to the Magistrate Court.

If you fail to request a hearing or do not prevail at the hearing, you are subject to a \$250 civil penalty and the court will suspend your driver's license and/or driving privileges with absolutely no driving privileges for one (1) year for your first offense, or for two (2) years for your second offense within ten (10) years (unless you meet the provisions of paragraph 4 as noted in the Suspension Advisory on the reverse side).

For Failing Evidentiary Testing (Pursuant to Section 18-8002A, Idaho Code)

You have been served this *Notice of Suspension* by a peace officer who had reasonable grounds to believe that you were operating a vehicle while intoxicated. After submitting to the test(s), you may, when practicable, have additional tests conducted at your own expense.

If you take the evidentiary test(s) and the results indicate an alcohol concentration of .08 or greater (.02 or greater if you are under 21 years of age), or the presence of drugs or other intoxicating substances in violation of the provisions of Sections 18-8004, 18-8004C, and 18-8006, Idaho Code, the peace officer shall:

1. Serve you with this *Notice of Suspension*, which becomes effective thirty (30) days after the date of service indicated on the reverse side of this notice. Failure of an evidentiary test will result in a ninety (90) day suspension of driving privileges, with absolutely no driving privileges during the first thirty (30) days of suspension. You may request restricted driving privileges during the final sixty (60) days of the suspension. If this is not your first failure of an evidentiary test within the last five (5) years, all of your driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind (unless you meet the provisions of paragraph 4 as noted in the Suspension Advisory on the reverse side).
2. If you were operating or in physical control of a commercial vehicle and the evidentiary test results indicate an alcohol concentration of:
 - A. .04 to less than .08, your commercial driving privileges will be suspended for ninety (90) days. You will have absolutely no commercial driving privileges of any kind.
 - B. .08 or greater (.02 or greater if you are under 21 years of age), or test results that indicate the presence of drugs or other intoxicating substances, all of your driving privileges will be suspended for ninety (90) days, with possible non-commercial driving privileges for the final sixty (60) days of the suspension. You will have absolutely no commercial driving privileges of any kind during the full ninety (90) day suspension.
 - C. If this is not your first failure of an evidentiary test within the last five (5) years, all of your driving privileges will be suspended for one (1) year and you will have absolutely no driving privileges of any kind (unless you meet the provisions of paragraph 4 as noted in the Suspension Advisory on the reverse side).

Hearing Request for Failure of Evidentiary Test

You have the right to request an administrative hearing on the suspension before the Idaho Transportation Department. Your request must be made in writing and be received by the department no later than seven (7) calendar days after the date of service on this *Notice of Suspension*. The request must state the issues intended to be raised at the hearing, and must include your name, date of birth, driver's license number, date of arrest, and daytime telephone number because the hearing will be held by telephone. The burden of proof, by preponderance of evidence, shall be upon the driver as to the issues raised in the hearing, pursuant to Section 18-8002A(7), Idaho Code.

If you request a hearing, it shall be held within twenty (20) days of the date the hearing request was received by the Idaho Transportation Department (Section 18-8002A, Idaho Code). If you do not request an administrative hearing within seven (7) days of service of this *Notice of Suspension*, your right to contest the suspension is waived. This suspension is separate and apart from any suspension that may be ordered by the court as a result of any criminal charges that may be brought against you.

Judicial Review

You may appeal the decision of the Hearing Officer by seeking judicial review to the District Court (Section 18-8002A, Idaho Code). Your appeal must be filed as a civil proceeding in the District Court, pursuant to Chapter 52, Title 67, Idaho Code.

Restricted Driving Permits

If your driving privileges are suspended for a period of ninety (90) days pursuant to Section 18-8002A, Idaho Code, you may request restricted driving privileges for the final sixty (60) days of the suspension (IDAPA Rule 39.02.70). Restricted driving privileges will not allow you to operate a commercial motor vehicle. You may make your written request for restricted driving privileges at any time after the service of this *Notice of Suspension*.

Reinstatement Requirements

Before being reinstated on this suspension, you will be required to pay a reinstatement fee. Any other suspension imposed by the court for this offense will require an additional reinstatement fee.

To request an administrative hearing or apply for a restricted driving permit relating to an administrative license suspension for failing evidentiary testing:

- Make your request in writing, including a daytime telephone number, to the Idaho Transportation Department, Driver Services Section, PO Box 7129, Boise ID 83707-1129, or
- Fax your request to Driver Services at (208) 332-4124, or
- Email your request to DriverRecords@itd.idaho.gov

If you have questions or need additional information regarding this notice or your driving privileges, call Driver Services at (208) 334-8735.

000015

CASE NO. CR-12-4156

2012 DEC 17 AM 8:57

PHELPS & ASSOCIATES, PS
ATTORNEY AT LAW
2903 N. Stout Rd.
Spokane, WA 99206-4373
Ph: (509)892-0467
Fax: (509)921-0802

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Plaintiff,

vs.

DEREK M. ARROTTA,

Defendant.

Case No. CR-12-4156
Citation No. ISP186458

NOTICE OF APPEARANCE

TO: PROSECUTING ATTORNEY

YOU WILL PLEASE TAKE NOTICE that the Defendant, DEREK M. ARROTTA, does hereby enter his appearance in the above cause(s) and requests that all further pleadings and papers herein (except process) be served upon his attorney, the undersigned, at the address stated above.

YOU WILL ALSO NOTICE that Defendant enters a plea of NOT GUILTY to the charge(s) of DUI.

DATED this 14 day of December, 2012

PHELPS & ASSOCIATES, PS

By: [Signature]
DOUGLAS D. PHELPS
Attorney for Defendant
IDBA 4755

Douglas D. Phelps
Attorney at Law
2903 North Stout
Spokane, WA 99206
(509)892-0467
(509)921-0802 Fax

CASE NO. CR-12-4156

2012 DEC 17 AM 8:57

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO)
Plaintiff)

vs.)

DEREK M. ARROTTA)
DOB: [REDACTED] Defendant)

CAUSE NO.
CITATION NO. ISP186458
REQUEST FOR BAC LICENSE
SUSPENSION HEARING

COMES NOW the Defendant, Derek M. Arrotta, by and through his attorney of record, Douglas D. Phelps, hereby requests a hearing as to whether defendant's license should be suspended for the statutory time period for failure to submit to a Breath Alcohol Test when requested by a peace officer.

DATED this 14 day of December, 2012

[Signature]
Douglas D. Phelps, ISBA# 4755
Attorney for Defendant

PHELPS & ASSOCIATES, PS
ATTORNEY AT LAW
2903 N. Stout Rd.
Spokane, WA 99206-4373
Ph: (509)892-0467F
ax: (509)921-0802

CR-12-4156
2012 DEC 17 AM 8:57
CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Plaintiff,

vs.

DEREK M. ARROTTA,

Defendant.

Case No. CR-12-4156
Citation No. ISP186458

DEFENDANT'S REQUEST
FOR DISCOVERY

PLEASE TAKE NOTICE that the undersigned pursuant to Rule 16 of the Idaho Criminal Rules, the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States, and Article § 1, 2, 13 and 17 of the Constitution of the State of Idaho requests discovery inspection of all materials discoverable by defendant per I.C.R. 16 b (1-8) and the aforementioned Constitution provisions including but not limited to the following information, evidence and materials:

1. Any relevant recorded statement made by the defendant and copies thereof, custody or control of the State, the existence of which is known or which is known or which is available to the prosecuting attorney by the exercise of due diligence, and also the substance of any relevant or oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney or his agent, and the recorded testimony of the defendant before a Grand Jury which relates to the offense charged.
2. Any written or recorded statements by a co-defendant, and the substance of

any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney, or which are otherwise relevant to the offense charged.

3. A copy of the defendant's prior record, if any, as is then or may become available to the prosecuting attorney.
4. Books, papers, documents, photographs, tangible objects, and copies and portions thereof, which are in the possession or control of the prosecuting attorney and which are material to the preparation of the defense, or intended for use by the prosecutor as evidence at trial, or obtained from or belonging to the defendant.
5. The results of reports of physical or mental examinations and of scientific tests or experiments made in connections with this particular case, and copies thereof, within the possession or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by exercise of due diligence.
6. A written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the prosecuting attorney as witnesses at trial, together with any record of prior felony convictions of any such person which is within the knowledge of the prosecuting attorney. Also the statements made by the prosecution witnesses, or prospective witnesses, made to the prosecuting attorney or his agents, or to any official involved in the investigatory process of the case. Provide a written list identifying by name, address, and relevant specialty, of all experts expected to testify or provide testimony at trial or hearing, and those have relevant knowledge of relevant facts, including their applicable medical, scientific or technical

backgrounds with their curriculum vitae.

7. All reports and memoranda in the possession of the prosecuting attorney or which may come into the possession of the prosecuting attorney which were made by a police officer or any investigator in connection with the investigation or the prosecution of this case.
8. The underlying facts or data that form the basis of any expert testimony pursuant to Idaho Rule of Evidence 705.
9. All documentation in support of or in connection with any search warrant issued in connection with this case, applications for search warrants (whether granted or denied), all affidavits, declarations and materials in support of such search warrants, all search warrants and all search warrant returns.
10. All material evidence within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976), *Kyles v. Whitley*, ____ U.S. ____, 115 S.Ct. 1555 (1985) and the progeny.
11. The existence and substance of any payments, promises of leniency, preferential treatment or other inducements or threats made to prospective witnesses, within the scope of the *United States v. Giglio*, 405 U.S. 150 (1972) and *Napue v. Illinois*, 362 U.S. 264 (1959) and their progeny.
12. Disclose whether a defendant or any other person was identified by any lineup, showup, photo spread or similar identification proceeding relating to the offense charged, and produce any pictures utilized or resulting therefrom and the names, addresses, and telephone numbers of all identifying witnesses.
13. The criminal record of any and all witnesses who will testify for the State at


trial.

14. All rough notes or field notes of any agents or officers of the State involved in this case.
15. Inform the defendant of the government's intention to introduce proof during its case in chief of evidence pursuant to Rule 404(b) I.R.E.
16. State whether the defendant was an aggrieved person, as defined by 18 U.S. § 2510 (11) of any electronic surveillance, and if so, set forth in detail the circumstances thereof.
17. Provide a copy of all test results that will be utilized by the prosecution for identification purposes, including types of testing performed, testing procedures, reagents and/or solvents used in testing, any comparative analyses performed, and number of experiments performed in each test.
18. Provide any audio or video recordings of the arrest.

The undersigned further requests permission to inspect and copy said information, evidence and materials within FOURTEEN (14) days of this request, unless this information is given to this office at a sooner time.

DATED this 14 day of December, 2012


PHELPS & ASSOCIATES, PS

By: 
DOUGLAS D. PHELPS
Attorney for Defendant
IDBA 4755

PHELPS & ASSOCIATES, PS
 ATTORNEY AT LAW
 2903 N. Stout Road
 Spokane, WA 99206-4373
 Ph:(509)892-0467
 Fax:(509)921-0802

CASE NO. CR-12-4156

2012 DEC 17 AM 8:59

CLERK OF DISTRICT COURT
 LATAH COUNTY
 BY  DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
 OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO)
 Plaintiff)
))
))
 vs.))
))
 DEREK M. ARROTTA)
 Defendant)
 _____)

Case No. CR-12-4156
 Citation No. ISP186458

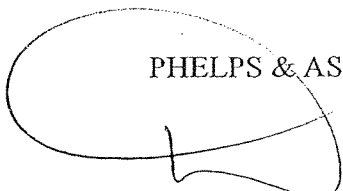
PRE-TRIAL MOTIONS

COMES NOW the Defendant, DEREK M. ARROTTA, and moves the court for an order on the following matters:

1. Motions in limine, (reserved);
2. Motion to suppress based on violations of the defendant's right to be free from unreasonable search and seizure, right to remain silent, right to counsel, and related constitutional protections under the State of Idaho Constitution and the United States Constitution. Defendant's brief in support of motion will be filed upon receipt of Discovery, including any audio/video recordings, from the prosecuting attorney.

Dated this 14 day of December, 2012

PHELPS & ASSOCIATES, PS

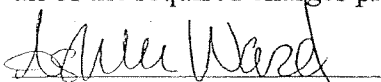


 Douglas D. Phelps
 Attorney for Defendant
 ISBA # 4755

000022

Certificate of Service

I, Ashlee D. Ward, hereby certify that on December 14, 2012, I caused a true and correct copy of the foregoing NOA, Demands & PT Motions to be forwarded with all of the required charges prepaid by the method indicated below.



Ashlee D. Ward

PHELPS & ASSOCIATES, PS

Latah County District Court

P.O. Box 8068

Moscow, ID 83843

☐ Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Overnight
Mail

Latah County Prosecuting Attorney

Latah County Courthouse

P.O. Box 8068

Moscow, ID 83843

☐ Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Overnight
Mail

000023

CASE NO. CR-12-4156

2012 DEC 24 AM 10:49

CLERK OF DISTRICT COURT
LATAH COUNTY

BY RE DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
MICHAEL G. CAVANAGH
DEPUTY PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
Phone: (208) 883-2246
ISB No. 7427

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
Plaintiff,)	
	)	Case No. CR-2012-0004156
V.)	
	)	RESPONSE TO REQUEST
DEREK M. ARROTTA,	)	FOR DISCOVERY
Defendant.)	
_____)	

TO: THE DEFENDANT, DEREK M. ARROTTA,

and Counsel, Douglas D. Phelps;

COMES NOW, the State in the above-entitled matter, and submits the following
Response to Request for Discovery.

The State has complied with such request by providing the following:

1. Any relevant written or recorded statements made by the defendant, or

copies thereof, within the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney, or the prosecuting attorney's agent have been disclosed, made available, or are attached hereto as set forth in Exhibit "A."

2. Any written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney, have been disclosed, made available, or are attached hereto as set forth in Exhibit "A."

3. Defendant's prior criminal record, if any, has been disclosed, made available, or is attached hereto as set forth in Exhibit "A."

4. All books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, which are in the possession, custody or control of the Prosecuting Attorney and which are material to the preparation of the defense, or intended for use by the prosecutor as evidence at trial, or obtained from or belonging to the defendant, have been disclosed, made available, or are attached hereto as set forth in Exhibit "A." Upon prior requested appointment with the Prosecutor's Office,

calibration records, manuals, daily logs, etc. for the Intoxilyzer 5000 EN, Lifeloc FC 20, and Alco-Sensor III are available for review. Manuals and other documents concerning such breath testing instruments are also available online at <http://www.isp.idaho.gov/forensic/certificates.html>. In addition, deputies and officers from the Latah County Sheriff's Office, Idaho State Police, and Moscow Police Department may record their law enforcement contacts via an audio recorder or audio/video recorder. Any audio and video recordings related to this matter are available for review and duplication on request.

5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody, or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence have been disclosed, made available, or are attached hereto as set forth in Exhibit "A."

6. A written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial has been or will be provided separately in accordance with I.C.R. 16(d). Any record of prior felony convictions of any such persons which is within the knowledge of the prosecuting attorney and all statements made by the prosecution witnesses or prospective prosecution witnesses to the

prosecuting attorney or the prosecuting attorney's agents or to any official involved in the investigatory process of the case have been disclosed, made available, or are attached hereto as set forth in Exhibit "A." Additionally, the State may call as witnesses anyone otherwise identified or referred to in reports, statements, or other documents referred to in this response.

7. Any written summary or report of any testimony that the state intends to introduce pursuant to Rule 702, 703 or 705 of the Idaho Rules of Evidence at trial or hearing, have been or will be disclosed, made available or attached hereto as set for in Exhibit "A." This response does not necessarily include disclosure of expert witnesses, their opinions, the fact and data for those opinions, or the witness's qualification, intended only to rebut evidence or theories that have not been disclosed under this rule prior to trial.

8. Any reports and memoranda in possession of the prosecuting attorney which were made by any police officer or investigator in connection with this investigation or prosecution of this case have been disclosed, made available, or are attached hereto as set forth in Exhibit "A."

9. All material or information within the prosecuting attorney's possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefore have been disclosed, made available, or are


attached hereto as set forth in Exhibit "A." In addition, with regard to material or information which may be exculpatory as used or interpreted, the State requests that the defendant inform the State, in writing, of the defense which will be asserted in this case, so counsel for the State can determine if any additional material or information may be material to the defense, and thus fulfill its duty under I.C.R. 16(a) and Brady v. Maryland, 373 U.S. 83 (1963).

10. The State objects to requests by the Defendant for anything not addressed above on the grounds that such requests are outside the scope of I.C.R. 16.

11. Wherever this Response indicates that certain evidence or materials have been disclosed, made available, or are attached hereto as set forth in Exhibit "A," such indication should not be construed as confirmation that such evidence or materials exist, but simply as an indication that if such evidence or materials exist, they have been disclosed or made available to the Defendant. Furthermore, any items which are listed in Exhibit "A" but are not specifically provided, or which are referred to in documents which are listed in Exhibit "A," are available for inspection upon appointment with the Prosecuting Attorney's Office. Additionally, all property forms, chain of custody documents, and similar items, are likewise available for inspection on appointment, and are hereby deemed to be part of "Exhibit A" for purposes of this response.

12. Pursuant to I.C.R. 16(j), if the State subsequently discovers additional evidence or evidence of additional witnesses, or decides to use additional evidence or witnesses, the State will promptly notify the defendant and the Court.

DATED this 22 day of December, 2012.



Michael G. Cavanagh
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Response to Request for

Discovery was:

☒ mailed, United States mail, postage prepaid

☐ hand delivered

☐ sent by facsimile, original by mail

to the following:

Douglas D. Phelps
Attorney at Law
2903 N. Stout Road
Spokane, WA 99206-4373

Dated this 24th day of December, 2012.

_____

STATE V. DEREK M. ARROTTA
CR-2012-0004156
EXHIBIT "A"

Police reports and documents covered by ICR 16 which are in the possession of the State have been disclosed to counsel for the defendant as of December 21, 2012. These materials consist of pages numbered 00001-00023, un-redacted pages 14, 17, and the following media: PA#12-1113.

EXHIBIT "A"

000031

CASE NO. GR-12-4156

2013 JAN -3 AM 10:11

LATAH COUNTY PROSECUTOR'S OFFICE
MICHAEL G. CAVANAGH
DEPUTY PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
Phone: (208) 883-2246
ISB No. 7427

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
Plaintiff,)	
	)	Case No. CR-2012-0004156
V.)	
	)	RESPONSE TO DEFENDANT'S
DEREK M. ARROTTA,	)	MOTION TO SUPPRESS
Defendant.)	
_____)	

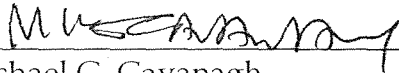
COMES NOW the State of Idaho, by and through Michael G. Cavanagh, Latah County Deputy Prosecuting Attorney, and respectfully submits the following response to the Defendant's "Pre-Trial Motions" dated December 14, 2012.

The Defendant seeks to have evidence suppressed and states that he intends to file a brief in support of the motion. The hearing on the motion is January 8, 2013. Without the brief in support of the motion, the State is unable to fully respond to the Defendant's motion and this Court has insufficient information to base a decision.

ORIGINAL
000032

Therefore, the State respectfully requests that this Court deny the motion. In the alternative, the State requests that this Court set a briefing schedule.

DATED this 2 day January, 2013.



Michael G. Cavanagh
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Response to Request for
Discovery was:

☒ mailed, United States mail, postage prepaid

☐ hand delivered

☐ sent by facsimile, original by mail

to the following:

Douglas D. Phelps
Phelps and Associates, PS
2903 N. Stout Road
Spokane, WA 99206-4373

Dated this 3rd day of January, 2013.

Kate Muchan

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,
PLAINTIFF,

VS.

Derek Arrotta
DEFENDANT.

CASE NO. CR-12-4156
PRE-TRIAL MOTION

CASE NO. _____
2013 JAN 10 AM 9:17

CLERK OF DISTRICT COURT
LATAH COUNTY
BY _____ DEPUTY

(THE STATE) (CITY OF MOSCOW), AND THE DEFENDANT, MOVE THE COURT AS FOLLOWS:

☒ 1. SET THIS CASE ON 2-19, 2013, AT 10:00 A.M. FOR:

- ☒ A. SET OR CONTINUE PRE-TRIAL COURT TRIAL/SENTENCING
☐ B. SENTENCING; RECOMMENDATIONS BELOW**
☐ C. COURT TRIAL, DEFENDANT EXPRESSLY WAIVES JURY TRIAL:
☒ X
DEFENDANT/DEFENDANT'S ATTORNEY SIGNATURE
☐ D. JURY TRIAL

☐ 2. DISMISS THIS CASE. REASON IS STATED BELOW**

☐ 3. AMEND THE CHARGE TO I.C. _____

☐ 4. RECOMMEND WITHHELD JUDGMENT. TERMS DETAILED BELOW**.

☒ 5. **OTHER DEFENDANT WANTS TO WAIT FOR U.S.S.C. DECISION

REGARDING IMPLIED CONSENT STATUTE. DEFENDANT WAIVES

RIGHT TO A SPEEDY TRIAL. Defendant understands that Speedy
PARTIES AGREE TO VACATE SUPPRESSION HEARING SCHEDULED Trial

☐ 6. REIMBURSEMENT FOR PUBLIC DEFENDER - YES _____ NO _____ \$ for 1-B-13. Right

☐ 7. I EXPRESSLY ACKNOWLEDGE I UNDERSTAND, AS READ TO ME, MY RIGHTS AS
AN ACCUSED PERSON; AND I WAIVE FURTHER READING OF THOSE RIGHTS;
AND WAIVE THE RIGHT TO HAVE A LAWYER REPRESENT ME.

I ADMIT THE CHARGE IN THE COMPLAINT IS TRUE AND **I PLEAD GUILTY.**

~~X~~ [Signature]

DEFENDANT'S SIGNATURE

DATED: 1-8-13

MUSCANY
PROSECUTOR

[Signature]
DEFENDANT/DEFENDANT'S ATTORNEY 4755

MOTION IS:
☒ APPROVED
☐ DENIED

☐ GUILTY PLEA ACCEPTED (SENTENCING RECOMMENDATIONS NOT ACCEPTED BY COURT UNLESS
CHECKED HERE OR ACCEPTED IN COURT.)

THE DEFENDANT IS FOUND GUILTY; FINED \$ _____ INCLUDING COSTS.

JURY PRE-TRIAL _____

JURY/COURT TRIAL _____

SENTENCING _____

[Signature]
MAGISTRATE JUDGE

000035

Jan/14/2013 9:52:07 AM

STERLING BANK 5096265333

1/1

CASE NO. CR-12-4156

PHELPS & ASSOCIATES, PS
 ATTORNEYS AT LAW
 2903 NORTH STOUT RD.
 SPOKANE, WA 99206
 Ph: (509)892-0467; Fax: (509)921-0802

2013 JAN 14 AM 11:31

CLERK OF DISTRICT COURT
 LATAH COUNTY
 BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO)	
Plaintiff	)	NO. CR-12-4156
)	
vs.)	
	)	WAIVER OF RIGHT TO SPEEDY TRIAL
)	
DEREK M. ARROTTA)	
Defendant)	
_____)	

COMES NOW, DEREK M. ARROTTA, Defendant in the above-entitled case, after being fully advised of my rights concerning a speedy trial, does hereby expressly waive any right to a quick and expedient trial which may exist under the Constitution of the United States, or the laws of the State of Idaho. Defendant does this of his own volition and under no duress.

Dated this 14 Day of January, 2013

[Signature]
 DEREK M. ARROTTA, Defendant

[Signature]
 DOUGLAS D. PHELPS, Attorney for Defendant

000036

PHELPS & ASSOCIATES, PS
 Attorneys at Law
 2903 N. Stout Road
 Spokane, WA 99206
 Phone: (509) 892-0467
 Fax: (509) 921-0802

CASE NO. CR-12-4156

2013 FEB 25 PM 3:35

CLERK OF DISTRICT COURT
 LATAH COUNTY
 BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
 OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO)	
Plaintiff	)	Case No. CR-12-4156
vs.)	
	)	MOTION TO SUPPRESS
	)	BLOOD DRAW WITHOUT
DEREK M. ARROTTA	)	WARRANT
Defendant)	
)	

I. FACTS

On December 08, 2012 police stopped the defendant and requested pursuant to Idaho's Implied Consent Statute 18-8002 that the defendant submit to a breath test. When the defendant refused to submit to a breath test the defendant was taken to Gritman Medical Center where the police ordered that a blood draw be made against the defendant's will and without the defendant's consent. A nurse at the hospital used a needle to pierce the defendant's arm and withdraw blood into the test tube. The police threatened him with physical force if he resisted the blood draw and told him he could not refuse.

II. ISSUE PRESENTED

A. May police conduct a warrantless seizure of a DUI defendant's blood when the defendant refuses a breath test without first obtaining a warrant?

III. ARGUMENT

A. Police may not seize a DUI defendant's blood without first obtaining a search warrant.

The issue in this case is whether the police can compel a warrantless blood test in a DUI case even when the "special facts" identified in *Schmerber* are missing and even when there is no reason to believe that a search warrant could not be obtained in a timely fashion. The government's effort to stretch *Schmerber* cannot be reconciled with the language of *Schmerber* or the United States Supreme Court position of Fourth Amendment warrants requirements.

The U.S. Supreme Court has repeatedly emphasized the importance of a warrant requirement, especially in the criminal context. The court has repeatedly held that per se exceptions to the warrant requirement are disfavored. Thus while the court has recognized the destruction of evidence as an exigent circumstance that can justify an exception to the warrant requirement it has typically required that the existence of exigent circumstances be made on a case by case basis rather than categorically. *Richard v. Wisconsin*, 520 U.S. 385 (1997) This is especially true when heightened privacy interests are at stake. Invasions of the home and intrusions of the body are examples of heightened privacy interest.

Warrant requirements should be determined based upon the totality of circumstances, including: whether there were facts delaying the officer; availability of other officers at the scene; distance to hospital; time required to obtain warrants; the

effects if any on the delay in admitting the blood test under evidentiary rules; and the efforts made by officers to obtain a warrant.

Since *Schmerber* was decided more than 60 years ago, it has become far more common for states to permit telephonic search warrant applications. See *Steuguld v. United States*, 451 U.S. 204 (1981) Electronic media including cell phones, internet technology, mobile computers, and other applications favor the requirement of warrants as the technology increases. Additionally, the availability of the retrograde extrapolation to calculate the blood level favors the warrant requirement.

The court should deny a per se rule allowing the taking of a defendant's blood absent a warrant requirement. "The mere fact that enforcement will be more efficient does not justify a disregard of the Fourth Amendment." *Mircey v. Arizona*, 437 U.S. 385, 393 (1978) The per se rule allowing a warrantless blood draw cannot survive Fourth Amendment scrutiny. *Arizona v. Gant*, 556 U.S. 332 (2009) Reasoned judgment is an inescapable part of the Fourth Amendment's reliance on a reasonable standard. *Maryland v. Wilson*, 519 U.S. 408, 422-423 (1997)

In order to admit the warrantless blood draws the government must prove exigent circumstances. *Minnesota v. Olson*, 495 U.S. 91, 100 (1990) The government must demonstrate the appropriateness of the search warrant to obtain a person's blood. "The point of the Fourth Amendment which is often not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protections consist in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the

competitive enterprise of ferreting out crime. *Johnson v. United States*, 333 U.S. 10, 13-14 (1948) *See also Coolidge v. New Hampshire*, 403 U.S. 443, 449 (1971)

“It is a cardinal principle that searches conducted outside the judicial process without prior approval of a judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specific and well-delineated exceptions.” *Mincey v. Arizona*, 437 U.S. at 390; citing *Katz v. United States*, 389 U.S. 347, 357 (1967)

The court also recognized that the warrant requirement has special force when the privacy interest at stake lie at the core of the Fourth Amendment. Bodily intrusion are an example. As stated in *Schmerber*, 384 U.S. at 770, “warrants are ordinarily required for searches of dwellings, and absent an emergency, no less could be required where intrusion into human body are concerned.” *See also Winston v. Lee*, 470 U.S. at 760 (intrusions into the human body implicate the “most personal and deeply rooted expectations of privacy”)

Fourth Amendment per se rules are generally disfavored in the Fourth Amendment context. *United States v. Drayton*, 536 U.S. 194, 201 (2002) The courts have rejected a blanket exception to the knock-and-announce rule in all felony drug cases. The better approach advanced by the Supreme Court has been the totality of the circumstances case-by-case approach. *United States v. Banks*, 540 U.S. 31 (2003)

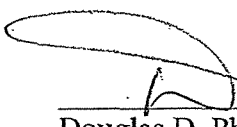
Applying the case law to Mr. Arrotta’s case we see that the police conducted a warrantless search. The police had hospital personnel draw Mr. Arrotta’s blood without a warrant and against his will. The government has not demonstrated any exception to the Fourth Amendment warrant requirement. As such the warrantless drawing of Mr. Arrotta’s blood should be suppressed.

II. CONCLUSION

A per se exception to the Fourth Amendment warrant requirement is inappropriate in this case. The government has demonstrated no exigent circumstances to dispense with the warrant requirement. As warrantless searches are presumed to be unreasonable the court should suppress the blood test.

Here, the hospital, judge, and a warrant could be obtained in minutes. Indeed the warrant could be obtained in the time it takes to go to the medical facility. The police have merely decided to exercise the discretion held only to the court by the Fourth Amendment and never seek a warrant. The court should suppress the warrantless search of the defendant's body and drawing of blood.

Respectfully submitted this 20th day of February, 2013



Douglas D. Phelps, ISBA#4755
PHELPS & ASSOCIATES, PS
Attorneys for Defendant

STATE OF IDAHO,

Plaintiff,

$$V_{\cdot}$$

DEREK M. ARROTTA

Defendant.

Case No. CR-12-4156

AFFIDAVIT IN SUPPORT
OF MOTION TO SUPPRESS
BLOOD TEST

State of Idaho

1-SS.

County of Latah

1. I am over the age of 18 and competent to testify in this matter.
2. On December 8, 2012 I was stopped and detained by law enforcement.
3. I was advised by audio recording of the breath test and I refused the breath test.
4. The officer advised me that I would have no choice and he would take me to the hospital.
5. The police explained that I could not refuse the blood test.
6. It was made clear that the police were going to make me allow the hospital employee stick me for a blood test.
7. I was forced to let the police draw my blood at threat of additional criminal charges.
8. Had I been allowed to refuse the blood draw I would have refused that test as well.

000042

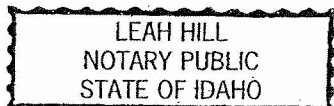
9. It was incredulous to me that the police could force me to allow my body to be stuck and blood taken without even an opportunity to call a lawyer.
10. No one told me that I could have blood drawn for my own use during the forced blood draw.

Furthermore, the affiant sayeth naught.

Derek Arrotta
Derek Arrotta

Signed and Sworn before me this 22nd day of February, 2013

Leah Hill
Notary Public
Residing in Spirit Lake
Commission expires: 4/4/17



CASE NO. CR-12-4156

2013 MAR -8 PM 2:40

LATAH COUNTY PROSECUTOR'S OFFICE
MICHAEL G. CAVANAGH
DEPUTY PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
Phone: (208) 883-2246
ISB No. 7427

CLERK OF DISTRICT COURT
LATAH COUNTY
BY RC CLERK

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
Plaintiff,)	
	)	Case No. CR-2012-0004156
V.)	
	)	RESPONSE TO DEFENDANT'S
DEREK M. ARROTTA,	)	MOTION TO SUPPRESS
Defendant.)	
_____)	

The State of Idaho, by and through Michael G. Cavanagh, Latah County Deputy Prosecuting Attorney, respectfully submits the following response to the Defendant's "Motion to Suppress Blood Draw Without Warrant."

BACKGROUND

At around 1:54 a.m. on December 8, 2012, Corporal Clint Baldwin of the Idaho State Police stopped a white Ford Taurus on South Main Street in Moscow, Idaho for an obstructed rear window which was almost completely covered in snow/ice/frost. See Copy of Corporal Baldwin's Probable Cause affidavit, attached. Upon making contact with the driver, Defendant Derek M. Arrotta, Corporal Baldwin noted the strong odor of an alcoholic beverage coming from the vehicle, that the Defendant's eyes were glassy

and bloodshot, and that the Defendant's speech was somewhat slurred. The Defendant admitted to consuming alcohol prior to driving.

Corporal Baldwin then asked that the Defendant take the Horizontal Gaze Nystagmus, Walk and Turn, and One Leg Stand evaluations, and the Defendant met the decision points on each of the three evaluations. Corporal Baldwin requested that the Defendant submit to a breath test to determine his breath alcohol content. After Corporal Baldwin played the audio recording of the ALS Advisory and completed the 15 minute waiting period, the Defendant refused to submit to a breath test.

Corporal Baldwin arrested the Defendant for Driving Under the Influence of Alcohol. Corporal Baldwin then transported the Defendant to Gritman Medical Center, where Medical Technician Teresa Smith conducted a blood draw to determine the Defendant's blood alcohol content. Upon analysis by the Idaho State Police Forensic Services laboratory, it was determined that the Defendant's blood alcohol content was 0.149. See Idaho State Police Forensics Lab Report, attached.

ANALYSIS

"The administration of a blood alcohol test constitutes a seizure of the person and a search for evidence within the purview of the Fourth Amendment to the United States Constitution." *State v. DeWitt*, 145 Idaho 709, 711-712, 184 P.3d 215, 217-218 (Ct. App. 2008) (citing *Schmerber v. California*, 384 U.S. 757, 767 (1966)). Although warrantless searches and seizures are presumptively unreasonable, the State can overcome this presumption by showing that the event fell within a recognized

exception to the warrant requirement, and that the search and seizure were reasonable in light of all of the other surrounding circumstances. *DeWitt*, 145 Idaho at 712, 184 P.3d at 218.

In this case, the administration of a blood alcohol test was justified under the exigent circumstances and consent exceptions to the warrant requirement.

A. Exigent Circumstances Exception

"The exigent circumstances exception allows agents of the state to conduct a warrantless search when there is a 'compelling need for official action and no time to secure a warrant.'" *DeWitt*, 145 Idaho at 712, 184 P.3d at 218. "It is well established that blood draws to test for alcohol concentration fall within this exigency exception because blood alcohol content diminishes over time, and valuable evidence would be lost in the time required to obtain a warrant." *Id.* (citing *Schmerber*). This exception applies to misdemeanors. *Id.* (citing *Schmerber*).

Therefore, the blood draw is valid under the exigent circumstances exception to the warrant requirement.

B. Consent Exception

Valid consent is a well-recognized exception to the warrant requirement. *DeWitt*, 145 Idaho at 712, 184 P.3d at 218. Idaho's implied consent statute states:

Any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at

the request of a peace officer having reasonable grounds to believe that person has been driving or in actual physical control of a motor vehicle in violation of the provisions of section 18-8004, Idaho Code, or section 18-8006, Idaho Code.

Idaho Code § 18-8002(1). As further discussed by the Idaho Court of Appeals in

Dewitt:

Under Idaho's implied consent statute, I.C. § 18-8002(1), anyone driving on Idaho roads is deemed to have impliedly consented to evidentiary testing for the presence of alcohol or drugs when a police officer has reasonable cause to believe the person was driving under the influence. In other words, "[b]y virtue of this statute, 'anyone who accepts the privilege of operating a motor vehicle upon Idaho's highways has consented in advance to submit to a BAC test.'" *Rodriguez*, 128 Idaho at 523, 915 P.2d at 1381 (quoting *Matter of McNeely*, 119 Idaho 182, 187, 804 P.2d 911, 916 (Ct. App. 1990)). See also *Diaz*, 144 Idaho 300, 160 P.3d 739. Implied consent to evidentiary testing is not limited to a breathalyzer test, but may also include testing the suspect's blood or urine. I.C. § 18-8002(9).

DeWitt, 145 Idaho at 712-713, 184 P.3d at 218-219; see also *State v. Diaz*, 144 Idaho 300, 160 P.3d 739 (2007).

Regarding the reasonableness requirement, the Idaho Supreme Court held:

Regardless of how it qualifies as an exception to the warrant requirement, a blood draw must comport with Fourth Amendment standards of reasonableness. *Schmerber*, 384 U.S. at 768, 86 S.Ct. at 1834, 16 L.Ed.2d at 918. To that end, the procedure must be done in a medically acceptable manner and without unreasonable force. *Id.* at 771-2, 86 S.Ct. at 1836, 16 L.Ed.2d at 920. Fourth Amendment reasonableness standards are assessed objectively by examining the totality of the circumstances.

Diaz, 144 Idaho at 303, 160 P.3d at 742.

Specifically, where a blood draw is conducted "at a hospital by a healthcare professional in a safe and reasonable manner," then the blood draw is reasonable.

DeWitt, 145 Idaho at 714, 184 P.3d at 220. Even when a driver protests a blood draw, such protest “does not invalidate consent created by a person’s actions and [the implied consent] statute.” *State v. Wheeler*, 149 Idaho 364, 370, 233 P.3d 1286, 1292 (Ct. App. 2010) (citing *Diaz*).

Therefore, based on the facts set forth above, the Defendant is deemed to have consented to the blood draw as a matter of law, and this satisfies the consent exception the warrant requirement.

CONCLUSION

Because the blood draw of the Defendant was valid under both the exigent circumstances and consent exceptions to the warrant requirement, the State respectfully requests the Defendant’s motion to suppress the evidence be denied.

DATED this 8 day March 2013.

MIKE CAVANAGH
Michael G. Cavanagh
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Response to Request for
Discovery was:

☒ mailed, United States mail, postage prepaid

☐ hand delivered

☐ sent by facsimile, original by mail

to the following:

Douglas D. Phelps
Phelps and Associates, PS
2903 N. Stout Road
Spokane, WA 99206-4373

Dated this 8th day of March, 2013.

Kate Meckham

IN THE DISTRICT COURT OF THE 2ND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

THE STATE OF IDAHO,
Plaintiff,

COURT CASE NUMBER _____
PROBABLE CAUSE AFFIDAVIT IN SUPPORT
OF ARREST AND/OR REFUSAL TO TAKE TEST

ARROTTA, Derek M.

Defendant

DOB: [REDACTED]

SSN/DL [REDACTED]

State: Washington

State of Idaho,

County of LATAH,

I, Corporal Clint A. Baldwin the undersigned, being first duly sworn on oath, deposes and says that:

1. I am a peace officer employed by the Idaho State Police.
2. The defendant was arrested on **December 8, 2012** at **0231** hours for the crime of **driving while under the influence of alcohol, drugs, or any other intoxicating substances pursuant to Idaho code section 18-8004**. Second or more DUI offense in the last ten years? **No - Misdemeanor**
Other Offenses:

3. Location of Occurrence: **Southbound on S. Main St near Lewis St, in Moscow, Latah County**

4. Identified the defendant as: **ARROTTA, Derek M.** by: **Driver's License**

5. Actual physical control established by: **Observation By Affiant**

6. I believe that there is probable cause to believe the defendant committed such crime because of the following facts:

(NOTE: You must state the source of all information provided below. State what you observed and what you learned from someone else, identifying that person):

PROBABLE CAUSE FOR STOP AND ARREST:

On December 8, 2012, at approximately 0154 hours, I, Corporal Clint A. Baldwin of the Idaho State Police, stopped a white Ford Taurus (Idaho registration K501684) southbound on S. Main Street near Lewis Street, in Moscow, Latah County, for an obstructed rear window (almost completely covered by snow/ice/frost). I could smell the strong odor of an alcoholic beverage coming from the Ford. I noticed the driver's eyes were glassy and bloodshot in appearance, and when he spoke his speech was somewhat slurred. The driver identified himself as Derek M. ARROTTA (DOB [REDACTED]) with his Washington Driver's License. ARROTTA admitted to consuming alcohol prior to driving. After running a driver's check, I asked ARROTTA to exit the Ford to perform the standardized field sobriety evaluations. ARROTTA performed and met the decision points each of the three evaluations administered (see attached copy of the Influence Report form). After listening to the ALS advisory and after the mandatory fifteen minute waiting period, ARROTTA refused to submit to a breath test. I arrested ARROTTA for DUI and transported him to Gritman Medical Center where a blood draw was conducted by Med Tech Teresa Smith. I transported ARROTTA to the Latah County Jail where he was booked in for driving while under the influence of alcohol, drugs, or any other intoxicating substances pursuant to Idaho code section 18-8004.

DVD: 224-222

D.U. I. NOTES

Odor of alcoholic beverage: Yes
Admitted drinking alcoholic beverage: Yes
Slurred speech: Yes
Impaired memory: Yes
Glassy/bloodshot eyes: Yes

Sobriety Tests—Meets Decision Points?

Gaze Nystagmus: Yes
Walk & Turn: Yes
One Leg Stand: Yes

Crash Involved: No Injury: No

Other:

Drugs Suspected: No Drug Recognition Evaluation Performed: No
Reason Drugs are Suspected:

Prior to being offered the test, the defendant was substantially informed of the consequences of refusal and failure of the test as required by Section 18-8002 and 18-8002A, Idaho Code.

Defendant was tested for alcohol concentration, drugs or other intoxicating substances. The test(s) was/were performed in compliance with Section 18-8003 & 18-8004 (4), Idaho Code, and the standards and methods adopted by the Department of Law Enforcement.

BAC: Blood and/or Urine Test Results Pending.

Videotape # 224-222

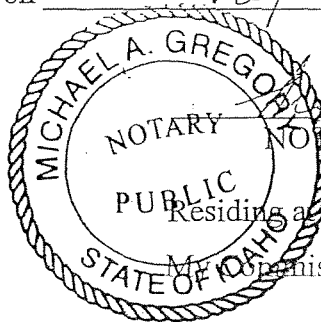
By my signature and in the presence of a person authorized to administer Oaths in the State of Idaho, I hereby solemnly swear that the information contained in this document and attached reports and documents that may be included herein is true and correct to the best of my information and belief.

Signed: _____

(affiant)

Subscribed and sworn to me on _____

(Date)



Residing at Moscow, Idaho

My Commission expires: 01/28/2015

ORDER

Based upon the above Affidavit, the Court hereby finds that there is Probable Cause to believe that a crime or crimes has been committed, and that the Defendant committed said crime or crimes.

Dated this _____ day of _____, 20____, at _____ hours.

MAGISTRATE

12/14/2012

Idaho State Police Forensic Services
615 W. Wilbur - Ste B Coeur d'Alene, ID 83815 (208)209-8700

Page 1

CL Case No.: C20122895
Agency: SP20 - ISP-PATROL
ORI: IDISP0200

Agency Case No.: L12000945
Crime Date: Dec 8, 2012

Criminalistic Analysis Report - ALCOHOL TESTING

Evidence Received Information

Evidence Received: 12/11/2012
Add. Crime Date:
How Received: FED EX
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: CPL. CLINT A. BALDWIN
Delivered By:
Received By: L. HIGDEM ph. (208)209-8700

Victims and Suspects

<u>Vic/Susp</u>	<u>Name</u>	<u>DOB</u>	<u>Sex</u>	<u>Race</u>
Suspect	ARROTTA, DEREK M.			

EVIDENCE DESCRIPTION:

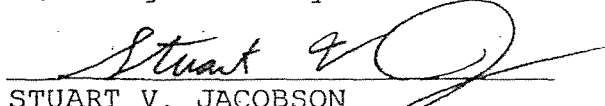
1- AGENCY EXHIBIT NO. 1. BLOOD COLLECTION KIT.

LABORATORY RESULTS

ETHYL ALCOHOL DETECTED: 0.149 grams/100 cc. of blood +/- 5.94%.

Note: Ethyl alcohol indicated with values of less than 0.020 g/100cc, but greater than 0.000 g/100cc, are reported out as "below reportable limit".

This report does or may contain opinions and interpretations of the undersigned analyst based on scientific data.


STUART V. JACOBSON
FORENSIC SCIENTIST

12-14-2012
Date

COPY 000053

20

CL Case No.: C20122895
Agency: SP20 - ISP-PATROL
ORI: IDISP0200

Agency Case No.: L12000945
Crime Date: Dec 8, 2012

Criminalistic Analysis Report - ALCOHOL TESTING

A F F I D A V I T

STATE OF IDAHO)
ss.)
COUNTY OF KOOTENAI)

STUART V. JACOBSON, being first duly sworn, deposes and says the following:

1. That I am a forensic scientist with the Idaho State Police, Forensic Services and am qualified to perform the examination and draw conclusions of the type shown on the attached report;
2. That Forensic Services is part of the Idaho State Police;
3. That I conducted a scientific examination of evidence described in the attached report in the ordinary course and scope of my duties with the Forensic Laboratory;
4. The conclusion(s) expressed in this report is/are correct to the best of my knowledge;

That the case identifying information reflected in this report came from the evidence packaging, a case report, or another reliable source.

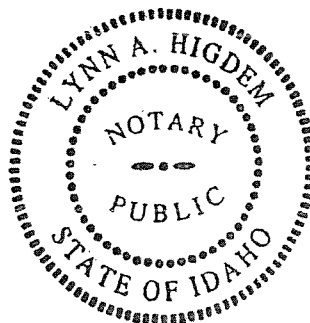
Forensic Scientist Signature: *Stuart V. Jacobson*

Date of Signature: 12-14-2012

SUBSCRIBED AND SWORN to before me on this 14th day of December, 2012.
A true and accurate copy of the report described above is attached to this affidavit.

Lynn A. Higdem
Notary Public, State of Idaho

Commission Expires: September 8, 2016



000054 21

CASE NO. CR2012-4156

2013 APR -2 AM 7:53

Phelps & Associates, PS
2903 N. Stout Road
Spokane, WA 99206
Ph: (509) 892-0467
Fax: (509) 921-0802

CLERK OF DISTRICT COURT
LATAH COUNTY
BY em DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
Plaintiff,)
)
v.)
)
DEREK M. ARROTTA,)
Defendant.)

Case No. CR-12-4156

ORDER TO CONTINUE

IT IS HEREBY ORDERED that the Motion Hearing scheduled for April 02, 2013
at 2:30p.m., be continued to a May 1, 2013, at 2:30 pm.
~~date to be determined by the court, pursuant to the~~
~~agreement of both parties and the motion of the defendant.~~

Signed this 1st day of April, 2013


JUDGE JUDGE

000055

CERTIFICATE OF MAILING

I do hereby certify that on this 2nd day of April, 2012 a true and correct copy of the
Order To Continue was hand delivered to:

Bill Thompson JR
Latah County Deputy Prosecutor
Latah County Courthouse
Moscow, ID 83843

And mailed to:
Phelps & Associates, PS
Douglas D Phelps
2903 N Stout Road
Spokane, WA 99206

Dated this 2nd day of April, 2013.

A handwritten signature in black ink, appearing to read "C. Mansel", is written over a horizontal line.

Deputy Clerk

CERTIFICATE OF MAILING

000056

Phelps & Associates, PS
2903 N. Stout Road
Spokane, WA 99206
Ph: (509) 892-0467
Fax: (509) 921-0802

CASE NO. CR-12-4156

2013 APR 30 PM 5:05

CLERK OF DISTRICT COURT
BY [Signature] DEPUTY
COUNTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
Plaintiff,	)	Case No. CR-12-4156
)	
v.	)	ORDER TO CONTINUE
)	
DEREK M. ARROTTA,)	
Defendant.)	

IT IS HEREBY ORDERED that the Motion Hearing scheduled for April ²²02, 2013
at 2:30p.m., be continued to June 06, 2013 at 2:30pm, pursuant to the agreement of both
parties and the motion of the defendant.

Signed this 30th day of April, 2013

[Signature]
JUDGE JUDGE

ORIGINAL
000057

CERTIFICATE OF MAILING

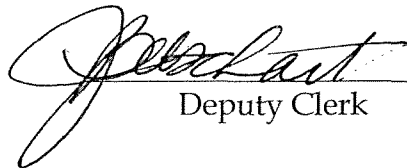
I do hereby certify that on this 1ST day of MAY a true and correct copy of the
ORDER TO CONTINUE was hand delivered to:

Latah County Prosecutor
Latah County Courthouse
Moscow, ID 83843

And Faxed to:

Phelps & Associates

Dated this 1st day of May .


Deputy Clerk

CERTIFICATE OF MAILING

000058

PHELPS & ASSOCIATES, PS
 Attorneys at Law
 2903 N. Stout Road
 Spokane, WA 99206
 Phone: (509) 892-0467
 Fax: (509) 921-0802

CASE NO. CR-12-4156

2013 JUN -3 PM 2:47

CLERK OF DISTRICT COURT
 LATAH COUNTY
 BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
 OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO)	
Plaintiff	)	Case No. CR-12-4156
vs.)	
	)	DEFENDANT'S REPLY BRIEF
	)	IN SUPPORT OF MOTION
DEREK M. ARROTTA	)	TO SUPPRESS
Defendant)	

I. FACTS

The affidavit of probable cause sworn to under penalty of perjury by Cpl. Clint A. Baldwin on 12/8/12, states that he provided 18-8002 rights to Mr. Arrotta who refused the breath test. Nevertheless, he took Mr. Arrotta to Gittman Medical Center. Mr. Arrotta was told he could not refuse a blood test. (Affidavit of Defendant) Mr. Arrotta said he was threatened with additional criminal charges if he did not allow the blood draw.

II. ISSUE PRESENTED

A. The illegal taking of the defendant's blood must be suppressed absent a valid search warrant.

The state acknowledges that the administration of a blood draw is considered a seizure under the Fourth Amendment of the United States Constitution and Article I § 17 of the Idaho Constitution. *State v. Wheeler*, 149 Idaho 364, 370, 233 P.3d 1286, 1292 (Ct. App. 2010) (citing *State v. Diaz*, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007) A

warrantless search and seizure is deemed per se unreasonable. *Id.* The state has the burden to show the seizure falls within an exception to the warrant requirement and the seizure is reasonable under the circumstances. *Id.* The government contends that they were nevertheless justified in this search maintaining consent and exigent circumstances.

The facts here clearly demonstrate that Mr. Arrotta revoked his implied consent on two occasions. First, after he was read his implied consent right under 18-8002 he refused a breath draw. Secondly, he refused a blood draw at Gritman Medical Center. He was then threatened with arrest and force to overcome his refusal.

To establish consent, the state has the burden of demonstrating consent by a preponderance of the evidence. *State v. Kelby*, 130 Idaho 747, 749, 947 P.2d 420, 422 (Ct. App. 1997) The state must show the consent was not the result of duress or coercion, either direct or implied. *Sckneckloth v. Bustamonte*, 412 U.S. 218, 248, 93 S. Ct. 2041, 2058, 36 L.Ed. 854 875 (1973); *State v. Whiteley*, 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App. 1993) The voluntariness of an individuals' consent is evaluated in light of all the circumstances. *Whiteley*, 124 Idaho at 264, 858 P.2d at 803 Whether consent was granted voluntarily, or was a product of coercion is a question of fact to be determined by all surrounding circumstances. *State v. Hansen*, 138 Idaho 791, 796, 69 P.3d 1052, 1057 (2003)

The evidence demonstrates that the "implied consent" was revoked at least two times. No warrant was obtained as required by the United States Supreme Court in *Missouri v. McLeely*, 569 U.S. ___, 133 S. Ct. 1552 (2013) requires suppression of the blood draw. The State of Idaho does not recognize a good faith exception to the warrant requirement. *State v. Koivu*, 152 Idaho 511, 272 P.3d 483 (2012)

B. Article I § 17 of the Idaho State Constitution requires suppression of the blood draw taken after refusal under Implied Consent.

Article I § 17 of the Idaho State Constitution grants greater protection than the Fourth Amendment of the United States Constitution. Article I § 17 provides: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizure shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized." The Idaho Supreme Court has found that this provision provides Idaho citizens greater protection from illegal searches.

The Idaho Supreme Court has found that Article I § 17 provides greater protection from the use of illegally seized evidence. *State v. Arrequi*, 44 Idaho 43, 254 P. 788 (1927); *State v. Rauch*, 99 Idaho 586 P.2d 671 (1978) The court similarly held that Article I § 17 granted greater protection to Idaho citizens and held the Leon good faith exception was contrary to Article I § 17. *State v. Koivu*, 152 Idaho 511, 516-518, 272 P.3d 483 (2012)

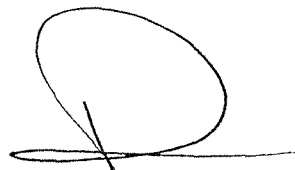
Article I § 17 provides the same type of protection when government seeks to force a criminal defendant to provide a blood sample. Article I § 17 assures that the person is protected absent warrants "particularly describing the place to be searched and the person or thing to be seized". Article I § 17 does not allow for searches absent particular facts related to any particular person a per se search violates Article I § 17. In applying Article I § 17 the Idaho Supreme Court should not allow a per se exception to the warrant requirement in a DUI case absent exigent circumstances. It is important to note that the court in *State v. Diaz* failed to consider Article I § 17 granting greater protection because the argument was not made before the District Court. *State v. Diaz*,

144 Idaho 300, 303, 160 P.3d 739, 742 (2007) In light of the courts holding in *State v. Koivu*, 152 Idaho 511, 519, 272 P.2d 483, 491 (2012) holding there is greater protection under Article I § 17 in not extending Leon good faith exception under Article I § 17. This court should protect Idaho citizens from warrantless searches after they refuse the test and revoke consent. Absent a search warrant Article I § 17 requires suppression of the blood draw.

II. CONCLUSION

The blood draw taken after Mr. Arrotta revoked his implied consent requires suppression of the blood draw absent a warrant. Article I § 17 provides greater protection to Idaho citizens and mandates a warrant before a blood draw occurs. When a refusal (revocation of implied consent) occurs, the forced blood draw must be suppressed.

Respectfully submitted this 3rd day of June, 2013



Douglas D. Phelps, ISBA#4755
PHELPS & ASSOCIATES, PS
Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

Title of Action St vs Arrotta Judge Judge
Type of Hearing Motion to Suppress Clerk MB
Attorney for Plf. Mr. Cavanaugh Recording 2:11:20
Attorney for Def. Chippus & Douglas Phelps Case No. CR-12-4156
Others Present _____ Date 6-6-13
Time 3:02pm

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Mr Cavanaugh gave opening remarks

(306) Clint Baldwin was called, sworn
& testified on behalf of the State

(328) Cross examination by Mr Phelps

Defendants exhibit A was marked
for identification, offered & admitted
into evidence w/o objection

(341) State rests

(342) David Arrotta was called, sworn &
testified on behalf of the defendant

(344) Cross examination by Mr Cavanaugh

(359) Redirect by Mr Phelps

(401) Recross by Mr Cavanaugh

(402) Further redirect by Mr Phelps

(403) defense rests

000063

RECORD OF COURT PROCEEDINGS

PAGE 2

RECORDING # _____

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

- (403) Cpt Baldwin was called, ^{previously} sworn & testified on rebuttal
- (403) Cross examination by Mr Phelps
- (404) Redirect by Mr Cavanaugh
- (404) Recross by Mr Phelps
- (405) Closing arguments by Mr Cavanaugh
- (429) Mr Phelps gave closing arguments
- (446) Redirect by Mr Cavanaugh
- (454) Court directed comments and stated findings into the record
- (515) Court suppressed Blood test Result only in this record.
- (530) STATE Requested a STATUS Conf be set Telephonic ~~the~~ Conference between Counsel 6-11-13 @ 11:00 AM
- Court Recessed @ 533 PM

000064

CASE NO. CR-12-418

2013 JUN 10 PM 4:56

CLERK OF DISTRICT COURT
LATAH COUNTY
BY MB DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Plaintiff,

vs.

DEREK M. ARROTTA,

Defendant.

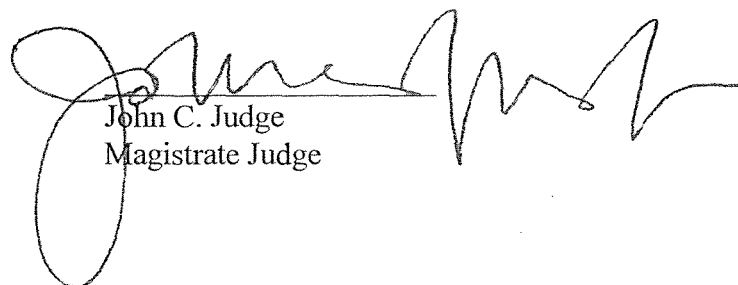
Case No. CR-2012-04156

ORDER SUPPRESSING
BLOOD TEST RESULTS

A hearing was held on June 6, 2013, on Mr. Arrotta's Motion to Suppress Blood Draw Without Warrant. Defendant was present and represented by Douglas D. Phelps. The State was represented by Michael G. Cavanaugh, Latah County Deputy Prosecuting Attorney. Trooper Clint Baldwin and Defendant testified. The Court considered the testimony, briefs, and argument of counsel.

Based on the findings and conclusions as explained in detail in open court, Defendant's Motion to Suppress is granted. The blood test results were the result of a nonconsensual, warrantless blood draw in violation of the Fourth Amendment of the United States Constitution.

DATED this 10th day of June, 2013.


John C. Judge
Magistrate Judge

ORDER SUPPRESSING
BLOOD TEST RESULTS - 1

000065

CLERK'S CERTIFICATE OF MAILING

I hereby certify that a true and complete copy of the foregoing was, on this 11 day of June, 2013, hand delivered to:

Michael Cavanaugh
Deputy Pros. Atty
Moscow, ID 83843

and mailed to:

Douglas D. Phelps
Attorney at Law
2903 N. Stout Rd.
Spokane, WA 99206

SUSAN R. PETERSEN
CLERK OF THE DISTRICT COURT



DEPUTY

ORDER SUPPRESSING
BLOOD TEST RESULTS - 2

000066

CASE NO. CR-2012-4156

2013 JUN 12 AM 9:15

CLERK OF DISTRICT COURT
LATAH COUNTY

BY Re DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
MICHAEL G. CAVANAGH
DEPUTY PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 882-8580 Ext. 3316
ISB No. 7427

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
Plaintiff,)	
	)	Case No. CR-2012-0004156
V.)	
	)	NOTICE OF APPEAL
DEREK M. ARROTTA,)	
Defendant.)	
_____)	

The State of Idaho, by and through Latah County Deputy Prosecuting Attorney Michael G. Cavanagh, submits this Notice of Appeal and hereby appeals the Magistrate Judge's Order Suppressing Blood Test Results. This appeal is made pursuant to Idaho Criminal Rule 54.1(d) and the related criminal rules.

Pursuant to Idaho Criminal Rule 54.4, the State provides the following information:

- (a) The title of the action or proceeding is State of Idaho versus Derek M. Arrotta.
- (b) The title of the court which heard the proceedings appealed from is the Magistrate Division of the District Court of the Second Judicial District, in and for the County of Latah, and the presiding magistrate is the Honorable John C. Judge.
- (c) The number assigned to the action or proceedings by the trial court is Latah County Case No. CR-2012-0004156.
- (d) The title of the court to which the appeal is taken is the District Court of the Second Judicial District, in and for the County of Latah.
- (e) The date of the judgment, decision or order from which the appeal is taken is June 10, 2013 (as evidenced by the filing stamp of the clerk of the court). (The hearing and oral pronouncement of the decision occurred on June 6, 2013.) The heading is Order Suppressing Blood Test Results.
- (f) The appeal is taken upon matters of fact and law.
- (g) The testimony and proceedings in the original hearing were recorded by audiotape, which is in the possession of the Clerk of the District Court of Latah County. The testimony and hearings were not reported.
- (h) A certificate that the notice of appeal has been served personally or by mailing upon the opposing party's attorney is attached to this notice.

(i) The State intends to assert in the appeal that the Magistrate Judge erred in his determination that the search and seizure of the Defendant's blood was unconstitutional, and in particular that the Magistrate Judge erred by holding that Missouri v. McNeely overturned or otherwise invalidated the controlling caselaw from the Idaho Supreme Court in State v. Diaz and the Idaho Court of Appeals in State v. Dewitt and State v. Wheeler.

DATED this 11 day of June, 2013.

MIKE CAVANAGH

Michael G. Cavanagh
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing NOTICE OF APPEAL
was

___ mailed, United States mail, postage prepaid

___ hand delivered

___ sent by facsimile, original by mail

to the following:

Hon. John C. Judge
Latah County Courthouse
Moscow, Idaho 83843

(hand delivered)

Douglas D. Phelps
Attorney at Law
2903 N. Stout Road
Spokane, WA 99206-0802

(mailed)

Dated this 12th day of June, 2013.

John F. Postland

CASE NO. CR 2012-4156
June 19 2013 9:07 AM
CLERK OF DISTRICT COURT
CRIMINAL COUNTY
BY [Signature] DEPUTY

[illegible]

Deputy Clerk

CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete
and correct copies of the foregoing NOTICE OF
LODGING OF TRANSCRIPT were hand-delivered to:

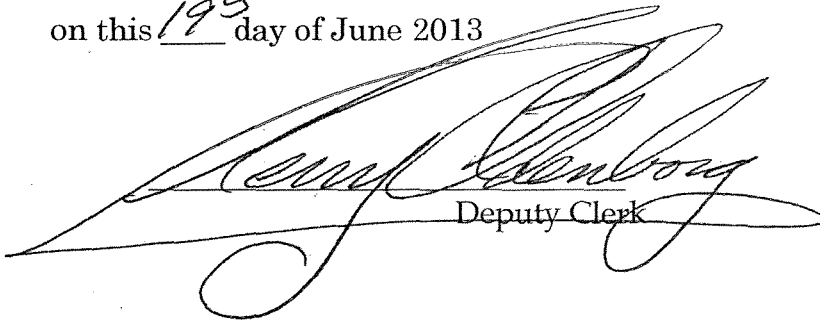
MICHAEL CAVANAGH
DEPUTY PROSECUTOR
LATAH COUNTY COURTHOUSE
MOSCOW, ID 83843

and transmitted by facsimile to:

DOUGLAS PHELPS
ATTORNEY AT LAW
2903 N STOUT ROAD
SPOKANE, WA 99206

509 921-0802

on this 19th day of June 2013



Deputy Clerk

CASE NO. ~~CR-2012~~-0004156

2013 JUL -1 PM 1:50

CLERK OF DISTRICT COURT
LATAH COUNTY

BY

DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
MICHAEL G. CAVANAGH
DEPUTY PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 883-2246
ISB No. 7427

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
Plaintiff,)	
	)	Case No. CR-2012-0004156
V.)	
	)	PROPOSED CORRECTIONS TO
DEREK M. ARROTTA,	)	TRANSCRIPT OF SUPPRESSION
Defendant.	)	HEARING
_____)	

The State of Idaho by and through, Michael G. Cavanagh, Latah County Deputy Prosecuting Attorney, hereby submits the States Proposed Corrections to Transcript of Suppression Hearing filed on June 14, 2013, as follows:

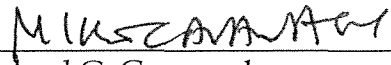
1. Page 38, Line 1: Add the word "consent" between "obtaining" and "to".
2. Page 93, Line 8: Add the word "state" between "the" and "Supreme Court".
3. Page 127, Line 4: Change the word "applied" to "implied".
4. Page 136, Line 11: Change the word "applied" to "implied".

PROPOSED CORRECTIONS TO
TRANSCRIPT OF SUPPRESSION
HEARING

PAGE -1-

ORIGINAL
000073

RESPECTFULLY SUBMITTED this 1 day of July, 2013.



Michael G. Cavanagh
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing PROPOSED
CORRECTIONS TO TRANSCRIPT OF SUPPRESSION HEARING was

☒ mailed, United States mail, postage prepaid

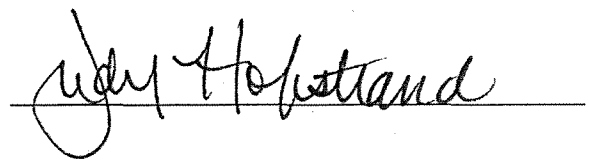
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to the following:

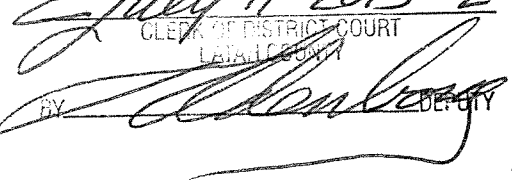
Douglas D. Phelps
Attorney at Law
2903 N. Stout Road
Spokane, WA 99206-0802

Dated this 1st day of July, 2013.



CASE NO.

CR 2012-4156

July 11 2013 2:18 PM
CLERK OF DISTRICT COURT
LATAH COUNTY
BY  DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
	)	Case No. CR-2012-4156
Plaintiff/Appellant,)	
	)	ORDER ON APPEAL
vs.)	
)	
DEREK MICHAEL ARROTTA,)	
)	
Defendant/Respondent.)	
<hr/>)	

The State of Idaho filed a Notice of Appeal on June 12, 2013, appealing the Magistrate Judge's Order Suppressing Blood Test Results. The transcript was lodged with this Court on June 14, 2013, and following the filing of the Proposed Corrections to Transcript of Suppression Hearing on July 1, 2013, which were not contested, the transcript is now deemed settled. Consequently, a briefing schedule is now appropriate.

It is ORDERED that:

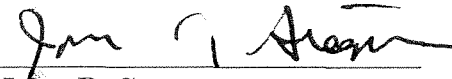
(1) Appellant's opening brief shall be filed and served no later than August 13, 2013;

(2) Respondent's brief shall be filed and served no later than September 10, 2013;

(4) Appellant's reply brief, if any, shall be filed and served no later than October 1, 2013; and

(5) Oral argument will be heard commencing at 10:00 A.M. on October 7, 2013, in Courtroom #3 of the Latah County Courthouse.

DATED this 11th day of July 2013.


John R. Stegner
District Judge

CERTIFICATE OF SERVICE

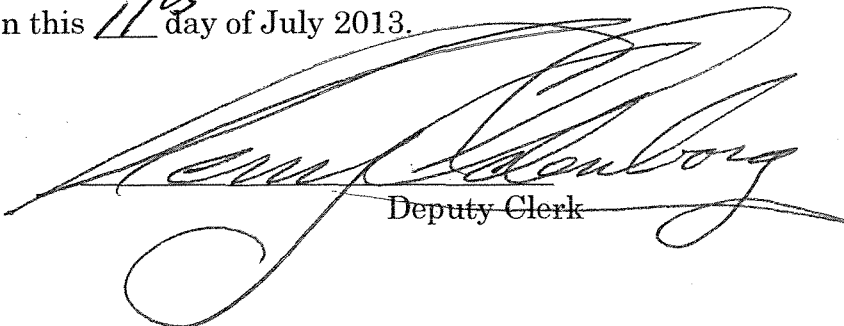
I do hereby certify that a full, true, complete and correct copy of the foregoing ORDER ON APPEAL was mailed to:

MICHAEL CAVANAGH
DEPUTY PROSECUTOR
LATAH COUNTY COURTHOUSE
MOSCOW, ID 83843

(hand delivered)

DOUGLAS PHELPS
ATTORNEY AT LAW
2903 N STOUT ROAD
SPOKANE, WA 99206

on this 11th day of July 2013.


Deputy Clerk

LATAH COUNTY PROSECUTOR'S OFFICE
MICHAEL G. CAVANAGH
DEPUTY PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 883-2246
ISB No. 7427

CR-12-456

2013 JUL 11 AM 9:17

CLERK OF DISTRICT COURT
LATAH COUNTY

BY 

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
Plaintiff,)	
	)	Case No. CR-2012-0004156
V.)	
	)	NOTICE OF NO OBJECTION
DEREK M. ARROTTA,	)	TO PROPOSED CORRECTIONS
Defendant.	)	TO TRANSCRIPT OF
	)	SUPPRESSION HEARING
_____)	

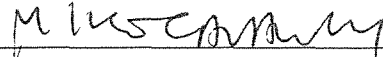
The State of Idaho, by and through Latah County Deputy Prosecuting Attorney Michael G. Cavanagh, gives notice to the Court that the State has been notified by defense counsel, Douglas R. Phelps, that he has no objection to the State's Proposed Corrections to Transcript of Suppression Hearing filed on July 1, 2013, as follows:

1. Page 38, Line 1: Add the word "consent" between "obtaining" and "to".
2. Page 93, Line 8: Add the word "state" between "the" and "Supreme Court".

3. Page 127, Line 4: Change the word "applied" to "implied".

4. Page 136, Line 11: Change the word "applied" to "implied".

DATED this 10 day of July, 2013.



Michael G. Cavanagh
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing NOTICE OF NO
OBJECTION TO PROPOSED CORRECTIONS TO TRANSCRIPT OF SUPPRESSION
HEARING was

☒ mailed, United States mail, postage prepaid

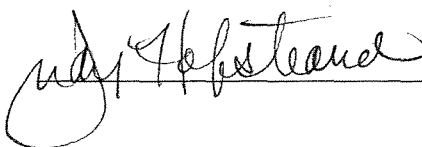
☐ hand delivered

☐ sent by facsimile

to the following:

DOUGLAS D. PHELPS
ATTORNEY AT LAW
2903 NORTH STOUT ROAD
SPOKANE, WA 99206

Dated this 14th day of July, 2013.



CASE NO. CR2012-4156

2013 SEP 10 AM 10:49

CLERK OF DISTRICT COURT

LATAH COUNTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT FOR
THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Appellant,

Cause No. CR-12-4156

v.

DEREK M. ARROTTA,

Respondent

RESPONDENT'S BRIEF

Appeal from the Magistrate Division of the District Court of the Second Judicial
District of the State of Idaho in and For the County of Latah

Honorable John C. Judge, Magistrate Judge

DOUGLAS D. PHELPS
2903 N. Stout Road
Spokane, WA 99206
(509) 892-0467
Attorney for Defendant/Appellant
(509) 835-5000
Attorneys for Respondent

WILLIAM W. THOMPSON
Prosecuting Attorney

MICHAEL G. CAVANAUGH
Deputy Prosecuting Attorney

Latah County Prosecutor's Office
PO Box 8068
Moscow, ID 83843
Attorney for Appellant

000081

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	PROCEDURAL BACKGROUND.....	
IV.	ISSUES ON REVIEW.....	
V.	ARGUMENT.....	
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	Did the Magistrate properly hold the defendant may revoke any statutorily created implied consent or "per se" warrant exception to the Fourth Amendment.....	
	The United States Supreme Court decision in <i>Missouri v. McNeely</i> is controlling Idaho Implied Consent by addressing "per se exceptions" to a warrant and clarifying <i>Schmerber v. California</i> , 384 U.S. 757 (1966) thereby altering Idaho case law interpreting Idaho's implied consent statute.	
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TABLE OF AUTHORITIES**IDAHO CASES**

<i>State v. Arrequi</i> , 44 Idaho 43, 254 P. 788 (1927)	10
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<i>State v. Hansen</i> , 138 Idaho 791, 796, 69 P.3d 1052, 1057 (2003)	7, 9
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<i>Arizona v. Gant</i> , 556 U.S. 332 (2009)	5
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<i>Mincey v. Arizona</i> , 437 U.S. 385, 393 (1978)	5
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OTHER AUTHORITIES

Article I § 17	2, 6-8, 10-11
Idaho Code 18-8002	6, 8
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Idaho Code 18-8007	8
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Idaho Code 19-4406	4
U.S. Constitutional Fourth Amendment	2, 3, 5, 6, 8, 10, 11

STATEMENT OF THE CASE
FACTUAL BACKGROUND

At approximately 1:54a.m. on December 08, 2012, Derek M. Arrotta was stopped because his vehicle was snow covered. (Transcript 6/6/2013 p. 12: 17-19, 13:8-19, 14:20-24) In his contact with Derek Arrotta, Corporal Baldwin noted a strong odor of alcohol, glassy and bloodshot eyes, and slurred words. (Transcript 6/6/2013 p. 14:8-25, 15:1-6) Mr. Arrotta admitted to drinking a couple of drinks prior to driving. (Transcript 6/6/2013 P. 15:7-8)

Cpl. Baldwin performed field sobriety tests which the Cpl. Concluded by asking Mr. Arrotta what he had consumed. (Transcript 6/6/2013 p. 16:10-21) Mr. Arrotta stated "a beer and a drink." (Transcript 6/6/13 p. 17:1-5) Based upon his observations and field tests, Cpl. Baldwin believed the defendant was over the legal limit and was under the influence of alcohol. (Transcript 6/6/13 p. 21:1-16)

Cpl. Baldwin detained Mr. Arrotta and played the Administrative License Advisory. (Transcript 6/6/2013 p. 21:21-25, 22:1-21) Mr. Arrotta refused to take a breath test. (Transcript 6/6/2013 p. 22:19-25, 23, 24:1-5) Mr. Arrotta was told he could not refuse and would be forced to give a blood test consistent with Idaho State Patrol Policy. (Transcript 6/6/2013 p. 33:1-9) That ISP policy would have required that Mr. Arrotta fight to preserve his right to not have a blood draw. (Transcript 6/6/2013 p. 33:18-25) The department policy at the time allowed him to do a blood draw from a defendant without getting a search warrant. (Transcript 6/6/2013 p. 39:16-22) Cpl. Baldwin never made any effort to obtain a search warrant for a blood draw.

(Transcript 6/6/2013 p. 39:21-25) Cpl. Baldwin acted pursuant to policy that a defendant did not have the right to withdraw his consent. (Transcript 6/6/2013 p. 40:1-9)

Mr. Arrotta was taken to Gritman where Cpl. Baldwin had the blood drawn. (Transcript 6/6/2013 p. 24:20-25) Mr. Arrotta was told he could not refuse the blood test. (Transcript 6/6/2013 p. 43:1-11, 19-24) Cpl. Baldwin made it clear that Mr. Arrotta could not refuse the blood draw. (Transcript 6/6/2013 p. 55:9-13) Cpl. Baldwin told Mr. Arrotta he had to get the blood draw. (Transcript 6/6/2013 p. 58:6-7) Cpl. Baldwin agreed that Mr. Arrotta could not refuse the blood draw. (Transcript 6/6/2013 p. 64:14-21) The blood draw results returned with a blood alcohol reading of 0.149. (Transcript 6/6/2013 p. 27:21-24)

The prosecution argued that the implied consent statute overrules the defendant's Fourth Amendment rights. (Transcript 6/6/2013 p. 82:17-19) The state argued that Article I § 17 and the Idaho State Constitution does not change the law regarding Implied Consent. (Transcript 6/6/2013 p. 89:19-25)

The defendant argued that the defendant revoked his consent and the search violated the Fourth Amendment and Article I § 17. (Transcript 6/6/2013 p. 99)

The magistrate on June 06, 2013 made findings of fact and conclusions of law in favor of the defendant. (Transcript 6/6/2013 p. 110-122 and 122:22-25, 123:15- p. 125) On June 10, 2013 the magistrate filed a written order granting the motion to suppress.

PROCEDURAL BACKGROUND

The defendant was charged with Driving Under the Influence of Alcohol, I.C. § 18-8004. The defendant pled "not guilty" and moved to suppress the blood test. On June 06, 2013 the

magistrate heard evidence and oral arguments. At the conclusion of the hearing, the magistrate stated his findings and conclusions and suppressed the blood test results.

On June 10, 2013 the magistrate filed a written order granting the motion to suppress. The state timely filed an appeal on June 12, 2013.

ISSUES PRESENT ON APPEAL

ISSUE 1: Did the magistrate err in determining that the implied consent statute does not overcome Fourth Amendment protections from warrantless searches?

ISSUE 2: Did the magistrate properly hold the defendant may revoke any statutorily created implied consent or "per se" warrant exception to the Fourth Amendment?

ISSUE 3: Did the United States Supreme Court decision in *Missouri v. McNeely* control the Idaho Implied Consent by addressing "per se exceptions" to a warrant and clarifying *Schmerber v. California*, 384 U.S. 757 (1966) thereby altering Idaho case law interpreting Idaho's implied consent statute?

STANDARD ON REVIEW

The court must defer to the factual findings of the magistrate, unless they are clearly erroneous. *State v. Wheeler*, 149 Idaho 364, 370, 233 P.3d 1286, 1202 (Ct. App. 2010)

ARGUMENT

ISSUE 1: The magistrate did not err in determining that the implied consent statute does not overcome Fourth Amendment protections from warrantless searches.

The Fourth Amendment provides: "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall be issued, but upon probable cause." The U.S. Supreme Court has held that a warrantless search of the person is reasonable only if it falls within a recognized exception. See e.g. *United States v. Robinson*, 414 U.S. 218, 224 (1973) The United States Supreme Court held a

blood draw for use in a criminal investigation implicates an individual's "most personal and deep-rooted expectations of privacy." *Missouri v. McNeely*, 569 U.S. ____ (2013) citing *Winston v. Lee*, 470 U.S. 753, 760 (1985); see also *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 616 (1989)

In *Schmerber v. California*, 384 U.S. 757 (1966) the U.S. Supreme Court applied the totality of the circumstances in determining exigent circumstances for a warrantless blood draw. *McNeely*, 569 U.S. ____ (2013); No. 11-1425 p. 9 (2013) The court rejects the categorical analysis and holds: "In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." *McNeely*, 569 U.S. ____ (2013); No. 11-1425 p. 9 (2013) citing *McDonald v. United States*, 335 U.S. 451, 456 (1948)...("We cannot.....excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made [the search] imperative").

The *McNeely* court noted that many states, including Idaho Code §§ 19-4404 and 19-4406, allow for telephonic warrants. See *McNeely*, 569 U.S. ____ (2013); No. 11-1425 p. 11 note 4 (2013) in rejecting the "per se rule" that allows for blood draws without a warrant requirement.

The court in Idaho should deny the "per se rule" as argued by the government in suggesting that implied consent is irrevocable. Here, the government suggests that enforcement will be more efficient where the police do not need search warrants for blood draws. The United States Supreme Court has addressed this argument holding: "The mere fact that enforcement will be

more efficient does not justify a disregard of the Fourth Amendment.” *Mincey v. Arizona*, 437 U.S. 385, 393 (1978) The per se rule allowing a warrantless blood draw cannot survive Fourth Amendment scrutiny. *Arizona v. Gant*, 556 U.S. 332 (2009) Reasoned judgment is an inescapable part of the Fourth Amendment’s reliance on a reasonable standard. *Maryland v. Wilson*, 519 U.S. 408, 422-423 (1997)

In order to admit the warrantless blood draws the government must prove exigent circumstances. *Minnesota v. Olson*, 495 U.S. 91, 100 (1990) The government must demonstrate the appropriateness of the search in order to obtain the warrant for a person’s blood. “The point of the Fourth Amendment which is often not grasped by zealous officer’s, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protections consist in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the competitive enterprise of ferreting out crime. *Johnson v. United States*, 333 U.S. 10, 13-14 (1948) See also *Coolidge v. New Hampshire*, 403 U.S. 443, 449 (1971)

“It is a cardinal principle that searches conducted outside the judicial process without prior approval of a judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specific and well-delineated exceptions.” *Mincey v. Arizona*, 437 U.S. at 390; citing *Katz v. United States*, 389 U.S. 347, 357 (1967)

The court also recognized that the warrant requirement has special force when the privacy interest at stake lie at the core of the Fourth Amendment. Bodily intrusion are an example. As stated in *Schmerber*, 384 U.S. at 770, “warrants are ordinarily required for searches of dwellings,

and absent an emergency, no less could be required where intrusion into human body are concerned." *See also Winston v. Lee*, 470 U.S. at 760 (intrusions into the human body implicate the "most personal and deeply rooted expectations of privacy")

Fourth Amendment per se rules are generally disfavored in the Fourth Amendment context. *United States v. Drayton*, 536 U.S. 194, 201 (2002) The courts have rejected a blanket exception to the knock-and-announce rule in all felony drug cases. The better approach advanced by the Supreme Court has been the totality of the circumstances case-by-case approach. *United States v. Banks*, 540 U.S. 31 (2003)

The state acknowledges that the administration of a blood draw is considered a seizure under the Fourth Amendment of the United States Constitution and Article I § 17 of the Idaho Constitution. *State v. Wheeler*, 149 Idaho 364, 370, 233 P.3d 1286, 1292 (Ct. App. 2010) (citing *State v. Diaz*, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007) A warrantless search and seizure is deemed per se unreasonable. *Id.* The state has the burden to show the seizure falls within an exception to the warrant requirement and the seizure is reasonable under the circumstances. *Id.* The government contends that they were nevertheless justified in this search maintaining consent and exigent circumstances, even though the officer never attempted to obtain a search warrant.

The facts here clearly demonstrate that Mr. Arrotta revoked his implied consent on two occasions. First, after he was read his implied consent right under 18-8002 when he refused a breath test. Secondly, he refused a blood draw at Gritman Medical Center. He was then threatened with arrest and force to overcome his refusal. (Transcript 6/6/2013 p. 33:1-9)

To establish consent, the state has the burden of demonstrating consent by a preponderance of the evidence. *State v. Kelby*, 130 Idaho 747, 749, 947 P.2d 420, 422 (Ct. App. 1997) The state must show the consent was not the result of duress or coercion, either direct or implied. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248, 93 S. Ct. 2041, 2058, 36 L.Ed. 854 875 (1973); *State v. Whiteley*, 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App. 1993) The voluntariness of an individuals' consent is evaluated in light of all the circumstances. *Whiteley*, 124 Idaho at 264, 858 P.2d at 803 Whether consent was granted voluntarily, or was a product of coercion is a question of fact to be determined by all surrounding circumstances. *State v. Hansen*, 138 Idaho 791, 796, 69 P.3d 1052, 1057 (2003)

The evidence demonstrates that the "implied consent" was revoked at least two times. No warrant was obtained as required by the United States Supreme Court in *Missouri v. McNeely*, 569 U.S. ___, 133 S. Ct. 1552 (2013) which requires suppression of the blood draw. The State of Idaho does not recognize a good faith exception to the warrant requirement, *State v. Koivu*, 152 Idaho 511, 272 P.3d 483 (2012), mandating suppression as the remedy under Article I § 17.

The case before the court is not a case with any exigent circumstances. But instead is a simple DUI where Cpl. Baldwin followed his department policy and forced Mr. Arrotta to submit to a blood test. (Transcript 6/6/2013 p. 33:1-9, 18-25, 39:16-22) Indeed, Cpl. Baldwin never attempted to obtain a search warrant, relying on the department policy that Mr. Arrotta could not withdraw consent. (Transcript 6/6/2013 p. 40:1-9) Consistent with the ruling of the U.S. Supreme Court the blood draw must be suppressed.

ISSUE 2: The magistrate did properly hold the defendant may revoke any statutorily created implied consent or "per se" warrant exception to the Fourth Amendment.

The state acknowledges that the administration of a blood draw is considered a seizure under the Fourth Amendment of the United States Constitution and Article I § 17 of the Idaho Constitution. *State v. Wheeler*, 149 Idaho 364, 370, 233 P.3d 1286, 1292 (Ct. App. 2010) (citing *State v. Diaz*, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007)) A warrantless search and seizure is deemed per se unreasonable. *Id.* The state has the burden to show the seizure falls within an exception to the warrant requirement and the seizure is reasonable under the circumstances. *Id.* The government contends that they were nevertheless justified in this search maintaining consent or exigent circumstances.

The facts here clearly demonstrate that Mr. Arrotta revoked his implied consent on two occasions. First, after he was read his implied consent right under I.C. 18-8002 and 18-8007 when he refused a breath test. Secondly, he refused a blood draw at Gritman Medical Center. He was then threatened with arrest and force to overcome his refusal. (Transcript 6/6/2013 p. 43:1-11, 19-24, 58:6-7, 64:14-21)

To establish consent, the state has the burden of demonstrating consent by a preponderance of the evidence. *State v. Kelby*, 130 Idaho 747, 749, 947 P.2d 420, 422 (Ct. App. 1997) The state must show the consent was not the result of duress or coercion, either direct or implied. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248, 93 S. Ct. 2041, 2058, 36 L.Ed. 854 875 (1973); *State v. Whiteley*, 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App. 1993) The voluntariness of an individuals' consent is evaluated in light of all the circumstances. *Whiteley*, 124 Idaho at 264,

858 P.2d at 803 Whether consent was granted voluntarily, or was a product of coercion is a question of fact to be determined by all surrounding circumstances. *State v. Hansen*, 138 Idaho 791, 796, 69 P.3d 1052, 1057 (2003)

The evidence demonstrates that the “implied consent” was revoked at least two times. No warrant was obtained as required by the United States Supreme Court in *Missouri v. McNeely*, 569 U.S. ___, 133 S. Ct. 1552 (2013) requires suppression of the blood draw. The State of Idaho does not recognize a good faith exception to the warrant requirement. *State v. Koivu*, 152 Idaho 511, 272 P.3d 483 (2012)

Mr. Arrotta could not refuse the blood draw according to Cpl. Baldwin. (Transcript 6/6/2013 p. 64:14-21) Cpl. Baldwin made it clear to Mr. Arrotta that he could not refuse a blood test. (Transcript 6/6/2013 p. 43:19-21, 55:9-13, 57:6-12, 58:6-7, 59:21-25) Cpl. Baldwin agrees that Mr. Arrotta could not refuse the blood draw. (Transcript 6/6/2013 p. 64:14-21) The government failed to get a warrant after the defendant refused both a breath and blood test. The “per se” exception to the warrant does not survive after a refusal of the test effectively revoking consent. Absent a search warrant the blood test was properly suppressed.

ISSUE 3: The United States Supreme Court’s decision in *Missouri v. McNeely* controls the Idaho Implied Consent by addressing “per se exceptions” to a warrant and clarifying *Schmerber v. California*, 384 U.S. 757 (1966) thereby altering Idaho case law interpreting Idaho’s implied consent statute.

As argued *supra* (see Issue 1) the Supreme Court has clarified the previous decision in *Schmerber v. California*, 384 U.S. 757 (1966) holding that absent exigent circumstances the police must obtain a search warrant to draw blood absent consent by the defendant. *Missouri v.*

McNeely, 569 U.S. ____ 2013; No. 11-1425 p. 9 (2013) “In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficiency of the search, the Fourth Amendment mandates that they do so.”

The court here should further consider that Article I § 17 of the Idaho State Constitution grants greater protection to Idaho citizens than the Fourth Amendment. The Idaho State Supreme Court has repeatedly held Article I § 17 provides greater protection for privacy rights of Idaho citizens. Article I § 17 provides: “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizure shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.” The Idaho Supreme Court has found that this provision provides Idaho citizens greater protection from illegal searches. The court should apply this protection requiring a warrant when the police seize the citizens blood.

The Idaho Supreme Court has found that Article I § 17 provides greater protection from the use of illegally seized evidence. *State v. Arrequi*, 44 Idaho 43, 254 P. 788 (1927); *State v. Rauch*, 99 Idaho 586 P.2d 671 (1978) The court similarly held that Article I § 17 granted greater protection to Idaho citizens and held the Leon good faith exception was contrary to Article I § 17. *State v. Koivu*, 152 Idaho 511, 516-518, 272 P.3d 483 (2012)

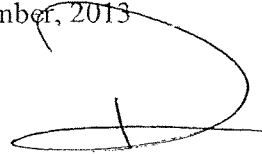
Article I § 17 provides the same type of protection when government seeks to force a criminal defendant to provide a blood sample. Article I § 17 assures that the person is protected absent warrants “particularly describing the place to be searched and the person or thing to be

seized". Article I § 17 does not allow for searches absent particular facts related to any particular person per se search sought here for blood draws violates Article I § 17. In applying Article I § 17 the Idaho Supreme Court should not allow a per se exception to the warrant requirement in a DUI case absent exigent circumstances. It is important to note that the court in *State v. Diaz* failed to consider Article I § 17 grant of greater protection because the argument was not made before the District Court. *State v. Diaz*, 144 Idaho 300, 303, 160 P.3d 739, 742 (2007) In light of the courts holding in *State v. Koivu*, 152 Idaho 511, 519, 272 P.2d 483, 491 (2012) holding there is greater protection under Article I § 17 in not extending Leon good faith exception under Article I § 17. This court should protect Idaho citizens from warrantless searches after they refuse the test and revoke implied consent. Absent a search warrant Article I § 17 requires suppression of the blood draw as does the Fourth Amendment to the United States Constitution. The government may not by statute or legislative action revoke a citizens constitutional protections under Article I § 17 or the Fourth Amendment.

CONCLUSION

The U.S. Supreme Court has rejected both a "per se" and categorical exception to the search warrant requirement for blood draws. As such, the court should properly reject an interpretation of the implied consent statute which allows for blood draws without the requirement of a search warrant pursuant to either the Fourth Amendment or Article I § 17 of the Idaho State Constitution. The defendant therefore seeks that this court uphold the decision of the magistrate court suppressing the blood draw as a violation of the defendant's constitutional protections.

Respectfully submitted this 10 day of September, 2013

A handwritten signature in black ink, appearing to be 'D. Phelps', written over a horizontal line.

Douglas D. Phelps
Phelps & Associates
N. 2903 Stout Rd.

CASE NO. CR 2012-4156

2013 SEP 13 PM 3:11

CLERK OF DISTRICT COURT
LATAH COUNTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,
Plaintiff - Appellant,

vs.

DEREK M. ARROTTA,
Defendant - Respondent.

LATAH COUNTY CASE
NO. CR-2012-0004156

APPELLANT'S REPLY BRIEF

APPEAL FROM THE MAGISTRATE DIVISION OF THE DISTRICT COURT OF
THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR
THE COUNTY OF LATAH

HONORABLE JOHN C. JUDGE
Magistrate Judge

WILLIAM W. THOMPSON
Prosecuting Attorney

MICHAEL G. CAVANAGH
Deputy Prosecuting Attorney

Latah County Prosecutor's Office
P.O. Box 8068
Moscow, Idaho 83843
(208) 883-2246

ATTORNEYS FOR
PLAINTIFF- APPELLANT

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ATTORNEY FOR
DEFENDANT- RESPONDENT

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ORIGINAL

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The State of Idaho, by and through Latah County Deputy Prosecuting Attorney Michael G. Cavanagh, hereby replies to the Respondent's Brief.

ARGUMENT

1. The State is not arguing the exigency or good faith exceptions to the warrant requirement; it is arguing that the Defendant's implied consent renders the blood draw lawful as explained by the Idaho Supreme Court in *State v. Diaz*.

The Defendant says that the State is arguing the exigency exception to the warrant requirement and the *Leon* good faith exception, and that warrantless blood draws will make law enforcement more efficient. Respondent's Brief (RB) at 6,8; 9,10,11; 4. The State is not making these arguments; the State's argument is that the Defendant's implied consent renders the blood draw lawful as explained by the Idaho Supreme Court in *State v. Diaz*, 144 Idaho 300, 302-303, 160 P.3d 739, 741-742 (2007) and other cases as further discussed in the State's initial brief.

2. The Defendant was not threatened with force.

The Defendant claims in his brief that he was "threatened with arrest and force to overcome his refusal." RB at 6 and 8. There is no evidence that the Defendant was threatened with force, and indeed the evidence is that Corporal Baldwin did not threaten the Defendant with force. Corporal Baldwin testified as follows:

Q [by the State] Okay. Or did you make any threat of physical force at all?

A [by Corporal Baldwin] No.

Suppression Hearing (SH) at 64.

In fact, on cross examination, the Defendant admitted that Corporal Baldwin did not threaten him with bodily harm, as follows:

Q [by the State] Okay. And uh you heard him testify that he didn't use force on you or threaten you with bodily harm. Is that all correct?

A [by the Defendant] Yeah.

SH at 52.

Finally, the magistrate made the factual finding, supported by substantial evidence, that no force was used or threatened:

Uh, there's no evidence that Trooper Baldwin uh used physical force against Mr. Arrotta in obtaining the blood draw. I do find that there was not an overt threat that force would be used, but at the same time, Trooper Baldwin made it clear that-- that Mr. Arrotta had to submit to that blood draw.

SH at 123.

3. *Missouri v. McNeely* only addressed blood draws and "per se" rules in the context of the exigency exception, and did not address the implied consent exception.

The Defendant quotes *Missouri v. McNeely*, 133 S.Ct. 1552, 1561 (2013), for the following proposition:

In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.

RB at 4. The Defendant also argues that the court in *McNeely* rejected a per se or

categorical exception for blood draws. SB at 11.

However, as explained in the State's initial brief, Justice Sotomayor begins the Court's majority opinion by stating that the case is (only) about the exigency exception to the warrant requirement:

We granted certiorari to resolve the split of authority on the question whether the natural dissipation of alcohol in the bloodstream establishes a *per se* exigency that suffices on its own to justify an exception to the warrant requirement for nonconsensual blood testing in drunk driving investigations.

Id. at 1558. State's Brief at 11.

As Chief Justice Roberts noted, citing the appellant's writ of certiorari, "The question presented is whether a warrantless blood draw is permissible under the Fourth Amendment 'based upon the natural dissipation of alcohol in the bloodstream.'"

Id. at 1574 (Roberts, J., concurring in part and dissenting in part).¹

In fact, the context of the entire quote above that was cited by the Defendant shows the Court was only addressing the exigent circumstances exception, the Court stated:

But it does not follow that we should depart from careful case-by-case assessment of **exigency** and adopt the categorical rule proposed by the State and its *amici*. In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the

¹ The full "Question Presented" is: "Whether a law enforcement officer may obtain a nonconsensual and warrantless blood sample from a drunk driver under the exigent circumstances exception to the Fourth Amendment warrant requirement based upon the natural dissipation of alcohol in the bloodstream." Pet. for Cert. i. (emphasis added).

Fourth Amendment mandates that they do so. See *McDonald v. United States*, 335 U.S. 451, 456, 69 S.Ct. 191, 93 L.Ed. 153 (1948) (“We cannot ... excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made [the search] imperative”). We do not doubt that some circumstances will make obtaining a warrant impractical such that the dissipation of alcohol from the bloodstream will support an exigency justifying a properly conducted warrantless blood test. That, however, is a reason to decide each case on its facts, as we did in *Schmerber*, not to accept the “considerable overgeneralization” that a *per se* rule would reflect. *Richards*, 520 U.S., at 393, 117 S.Ct. 1416.

McNeely, 133 S.Ct. at 1561 (emphasis added).

Finally, the Court concludes its opinion with the following:

We hold that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.

Id. at 1568 (emphasis added).

Thus, with *McNeely* not addressing the implied consent exception, this Court is bound to follow the controlling caselaw in Idaho and hold that blood can lawfully be drawn from a driver pursuant to the implied consent statute.

4. The Defendant could not revoke his implied consent, and thus his actual, express consent at the time of the evidentiary test was not needed for the search to be lawful.

The Defendant argues that a driver can revoke his consent, and that consent (and its voluntariness) should be considered on a case-by-case analysis based on the totality of the circumstances. See RB at 7. However, the caselaw regarding the implied consent

statute shows this is incorrect. Instead, once the implied consent statute is triggered, the defendant does not have a legal right to revoke his consent. *State v. LeClercq*, 149 Idaho 905, 909, 243 P.3d 1093, 1097 (Ct. App. 2010); *see also State v. DeWitt*, 145 Idaho 709, 715 n.3, 184 P.3d 215, 221 n. 3 (listing cases that stand for the above proposition). Because of this, the Idaho Court of Appeals held:

It is thus apparent that the question of [the Defendant's] consent at the police station, whether voluntary or involuntary, is superfluous, for actual consent at that point is unnecessary to the lawfulness of the procedure or the admissibility of the test results.

State v. Nickerson, 132 Idaho 406, 410, 973 P.2d 758, 762 (Ct. App. 1999).

5. The magistrate correctly held that the Idaho Constitution does not provide for additional protection in this case.

Although Art. 1 § 17 of the Idaho Constitution can provide greater protection than the Fourth Amendment, it only does so "based on the uniqueness of our state, our Constitution, and our long-standing jurisprudence." *State v. Donato*, 135 Idaho 469, 472, 20 P.3d 5, 8 (2000). Although the Defendant notes the few, rare cases in which the Idaho Constitution has been found to afford greater protection, he has not made any argument to the magistrate court or this Court showing how or why the Idaho Constitution can or should provide greater protection for blood draws. Indeed, there is nothing unique about our state, our Constitution, or our long-standing jurisprudence that would support the proposition that the Idaho Constitution provides for additional protection.

CONCLUSION

The search and seizure of the Defendant's blood was constitutional due to the consent exception to the warrant requirement, and the magistrate erred in holding otherwise. Therefore, the State respectfully requests that this Court reverse the magistrate court's Order Granting Motion to Suppress.

Dated this 13 day of September, 2013.

MIKE CAVANAGH
Michael G. Cavanagh
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF was delivered to following person and in the manner indicated:

DOUGLAS D. PHELPS
Attorney at Law
2903 N. Strout Rd.
Spokane, WA 99206-0802
(509) 892-0467

☒ U.S. Mail

Dated this 13th day of September, 2013.

Judy Hapstad

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

- COURT MINUTES -

John R. Stegner
District Judge

Sheryl L. Engler
Court Reporter
Recording: Z: 3/2013-10-07
Time: 10:00 A.M.

Date: October 7, 2013

STATE OF IDAHO,)

Plaintiff/Appellant,)

vs.)

DEREK MICHAEL ARROTTA,)

Defendant/Respondent.)

Case No. CR-2012-4156

Appearances:

Michael Cavanagh, Deputy Prosecutor
Appearing on behalf of the State

Defendant not present, represented by
Douglas D. Phelps, Spokane, WA

Subject of Proceedings: APPELLATE ARGUMENT

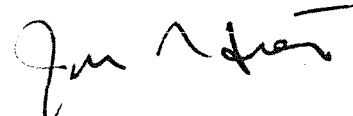
This being the time fixed pursuant to order of the Court for hearing appellate argument in this case, Court noted the presence of counsel and the absence of the defendant.

Mr. Cavanagh responded to inquiries from the Court and presented appellate argument on behalf of the plaintiff/appellate. Mr. Phelps presented appellate argument on behalf of the defendant/respondent. Mr. Cavanagh argued in rebuttal. No surrebuttal argument.

For reasons articulated on the record, Court affirmed the magistrate's decision in this case, informing counsel that it would issue a written decision.

Court recessed at 10:58 A.M.

APPROVED BY:



JOHN R. STEGNER
DISTRICT JUDGE

Terry Odenborg
Deputy Clerk

COURT MINUTES

000107

CASE NO. CR 2012-4156
October 31 2013 3:39 PM
CLERK OF DISTRICT COURT
BY Adenborg DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
	)	Case No. CR-2012-4156
Plaintiff-Respondent,)	
	)	MEMORANDUM OPINION
vs.)	
)	
DEREK MICHAEL ARROTTA,)	
)	
Defendant-Appellant.)	
)	
)	

On December 10, 2012, Derek Michael Arrotta was charged with
misdemeanor Driving Under the Influence in violation of Idaho Code § 18-
8004(1)(a). Prior to trial, Magistrate Judge John C. Judge granted the defendant's
Motion to Suppress Evidence. The State appeals from that decision.

BACKGROUND

Arrotta was stopped in his vehicle in the early morning hours of December 8, 2012, by Corporal Baldwin of the Idaho State Police (ISP). The driver's side window of Arrotta's vehicle was covered in snow, ice, and frost, affecting the driver's visibility and constituting a traffic infraction. After Baldwin stopped Arrotta, he noted a strong odor of alcohol, glassy and bloodshot eyes, and slurring of words. Baldwin suspected that Arrotta was intoxicated, and performed a horizontal gaze nystagmus evaluation. In response to Baldwin's questions, Arrotta admitted that he had consumed alcohol prior to driving. Baldwin then performed two additional field-sobriety evaluations, which Arrotta failed.

Based on Baldwin's evaluations and observations, as well as Arrotta's admission, Baldwin detained Arrotta and prepared equipment to perform a breath test. However, Arrotta refused to perform the breath test when requested to do so by Baldwin. Baldwin then informed Arrotta that a blood draw would be performed at the local hospital if he refused to perform the breath test. After discussing with Baldwin the consequences of refusing to perform the breath test, Arrotta once again declined. Baldwin then arrested Arrotta, and transported him to Gritman Medical Center for the performance of a warrantless blood draw.

At Gritman, a blood draw was performed. Arrotta did not physically resist; however, he never consented to the test. The blood test results indicated that Arrotta had a blood alcohol content of 0.149, exceeding the legal limit for driving

under Idaho Code § 18-8004. Arrotta was charged with misdemeanor driving under the influence.

On June 6, 2013, the Magistrate Judge heard argument on defendant's Motion to Suppress the blood test as an unreasonable search under the Fourth Amendment of the United States Constitution and Article I, § 17 of the Idaho State Constitution. The State argued that the evidence was admissible through implied consent under Idaho Code §§ 18-8002 and 18-8007. Tr. 66:25-67:20. The State also argued that such implied consent was irrevocable. Tr. 68:22-25. The defense argued that Arrotta revoked his implied consent to testing when he refused to take the test, and further argued that the blood test violated the Fourth Amendment and Article I, § 17. Tr. 93:6-97:4.

Ruling from the bench, Judge Judge granted the Motion to Suppress. He found that Baldwin had probable cause to stop Arrotta for a traffic infraction. He also found that there were no exigent circumstances, that there was no express consent, nor were there any other exceptions to the warrant requirement that would support the warrantless search. Tr. 111:19-112:10, 113:7-11.

Noting that the recent U.S. Supreme Court decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013), cast doubt on Idaho's implied consent law, Judge Judge determined that implied consent was not "sufficient to erase . . . a Fourth Amendment right to be free from unreasonable search and seizures . . ." Tr. 116:1-5. He also stated that he could not make a "logical distinction . . . between a

categorical *per se* exemption for exigency in [DUI] cases and a categorical exception under implied consent.” Tr. 117:7-10.

Thus, Judge Judge determined that the government was required to procure a warrant for the blood draw in this case, and had not done so, making the invasive search unreasonable. This appeal followed.

ANALYSIS

A trial court’s ruling on a motion to suppress is reviewed on a bifurcated standard. *State v. Wheeler*, 149 Idaho 364, 233 P.3d 1286 (Ct. App. 2010). Findings of fact supported by substantial evidence are accepted, but the reviewing court considers the application of constitutional principles *de novo*. *Id.*, 149 Idaho at 370, 233 P.3d at 1292.

The Fourth Amendment of the U.S. Constitution provides that the right to be secure from unreasonable searches and seizures shall not be violated, and that no warrants will issue except upon probable cause. U.S. CONST. AMEND. IV. Article I, § 17 of the Idaho Constitution provides similar, although some would argue greater, protection against unreasonable searches. A blood alcohol test administered at the direction of law enforcement constitutes a search for evidence and seizure of the person under the Fourth Amendment and Article I, § 17. *State v. Diaz*, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007).

Warrantless searches are presumptively unreasonable; that presumption is overcome only when the State shows (1) that the search falls within a well-

recognized exception to the warrant requirement, and (2) that the search is reasonable in light of all the surrounding circumstances. *Wheeler*, 149 Idaho at 370, 233 P.3d at 1292.

Consent is a well-recognized exception to the Fourth Amendment warrant requirement. *Id.* Under Idaho Code § 18-8002(1), every operator of a motor vehicle in the state of Idaho is deemed to have given consent to evidentiary testing for alcohol concentration.¹ This is commonly referred to as implied consent. Among other provisions, the implied consent statute authorizes the imposition of a \$250 civil penalty and the suspension of one's driving privileges for one year for refusal to submit to testing. I.C. § 18-8002.

As a matter of judicial interpretation by Idaho courts, the implied consent statute now also serves as an exception to the federal and state constitutional warrant requirements, in criminal cases. *See State v. Woolery*, 116 Idaho 368, 371, 775 P.2d 1210, 1213 (1989). In *Woolery*, the Idaho Supreme Court explained that the implied consent statute is "devoted entirely to the administrative, or civil, suspension of the license of a driver" and that it "does not in any way discuss criminal offenses related to driving under the influence of alcohol." *Id.*, 116 Idaho

¹ I.C. § 18-8002(1) states:

Any person who drives or is in physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been driving or in actual physical control of a motor vehicle in violation of the provisions of section 18-8004, Idaho Code, or section 18-8006, Idaho Code.

at 373, 775 P.2d at 1215. Nevertheless, in the same paragraph, and without attribution to any other authority, the Court concluded that implied consent could also be used in criminal cases, because the scheme of the statute “was not meant to hamstring the ability of law enforcement to properly investigate and obtain evidence of serious crimes committed by those individuals who have chosen to drink and then drive.”² *Id.*

Ultimately, the Court held that drivers have neither a “general constitutional right to refuse to take a blood alcohol test” nor “a *statutory right* for a driver to withdraw his previously given consent” *Id.*, 116 Idaho at 371, 372, 775 P.2d at 1213, 1214 (italics in original). Later, in *Diaz*, the Idaho Supreme Court explained that the type of evidentiary test to be administered (breath, urine, or blood analysis) is the officer’s choice, not the driver’s. *Diaz*, 144 Idaho at 302-03, 160 P.3d at 741, 42.

Later cases have reinforced implied consent as *irrevocable*. See *State v. LeClercq*, 149 Idaho 905, 907-08, 243 P.3d 1093, 1095-96 (Ct. App. 2010) (“Idaho courts have long held that a driver has no legal right to resist or refuse evidentiary testing,” citing *State v. DeWitt*, 145 Idaho 709, 184 P.3d 758 (Ct. App. 2008) and

² It is difficult to understand how the *Woolery* Court concluded that I.C. § 18-8002 is “devoted entirely to the administrative, or civil, suspension of the license of a driver” and at the same time determined that “implied consent” overcomes the prohibition against unreasonable searches that are contained in both the Idaho and U.S. constitutions. In trying to find the genesis of “implied consent” for purposes of a criminal case, this Court is at a loss other than to conclude it is a judicial creation. It appears that the *Woolery* Court, after concluding that I.C. § 18-8002 “does not in any way discuss criminal offenses related to driving under the influence of alcohol” nevertheless decided that the prohibitions against unreasonable searches no longer applied when an individual is suspected of driving under the influence of alcohol. While I am duty-bound to comply with precedent from the Idaho Supreme Court, I owe a higher obligation of fealty to the constitutions of our nation and state.

Diaz, 144 Idaho 300, 160 P.3d 739); *see also Wheeler*, 149 Idaho at 371, 233 P.3d at 1292 (“In *Diaz*, the Court found that the defendant gave his consent to a blood draw by driving in Idaho, despite his repeated protests. . . . In view of the Supreme Court’s decision in *Diaz*, we conclude that a protest to a blood draw does not invalidate consent created by a person’s actions and statute.”).

The effect of *Woolery* and its progeny is to make any driver in the state of Idaho, whether protesting or not, legally subject to a blood test without any requirement to obtain a warrant. However, *Woolery* has recently been drawn into question by the U.S. Supreme Court in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013). The facts in *McNeely* are strikingly similar to facts in the current case. In *McNeely*, an officer stopped the defendant in the early morning hours after he was observed exceeding the posted speed limit and repeatedly crossing the centerline. *Id.* at 1556. After observing signs of intoxication, and after the defendant admitted to consuming alcohol, the officer performed several field-sobriety tests. *Id.* at 1557. The defendant then refused to perform a breath test. *Id.* The officer then began transporting the defendant to the jail; however, following a renewed refusal by the defendant to undergo a breath test, the officer took the defendant to a local hospital. *Id.* Upon reaching the hospital, the defendant refused to take a blood test, but did not physically resist. *Id.* The officer read a standard implied consent form to the defendant. *Id.* No attempt to secure a warrant for the search was made. *Id.* *McNeely*’s blood was drawn and it indicated his blood-alcohol level

was above the legal limit. *Id.* McNeely then sought to have the results of the warrantless blood draw suppressed. *Id.*

The Supreme Court ruled that there were no exigent circumstances that prevented the officer from obtaining a warrant before performing the blood draw and sustained the lower court's suppression of the blood alcohol evidence. *Id.* at 1568. The Court held that exigency, in the context of DUI cases, must be determined by the totality of the circumstances, rejecting *per se* exigency exceptions to the warrant requirement. *Id.* at 1556. The *McNeely* decision calls into question the viability of implied consent in a criminal case as a *per se* exception to the warrant requirement.

In *McNeely*, a plurality of the Court briefly discussed the role of implied consent laws in the states, noting that all fifty states have implied consent laws as part of their toolbox to deal with drunk drivers. *Id.* at 1566 (Sotomayor, J., joined by Scalia, Ginsburg, and Kagan, JJ.). This plurality acknowledged that many implied consent laws allow the state to revoke a driver's license upon refusal to perform an evidentiary test, and noted with approval that a majority of states place "significant restrictions on when police officers may obtain a blood sample despite a suspect's refusal . . . or prohibit nonconsensual blood tests altogether." *Id.*

Elsewhere in the opinion, the Court specifically explained that "[i]n those drunk-driving investigations where police officers can reasonably obtain a warrant

before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.” *Id.* at 1561.

The State in this case argues that the holding of *McNeely* is limited exclusively to the subject of the exigency exception, and does not implicate any changes to the implied consent exception. *McNeely* is broader than the State suggests: it holds that *per se* statutory schemes attempting to circumvent the warrant requirement altogether are prohibited. Regarding the State of Missouri’s attempt at such a scheme, a majority of the Court wrote: “Here and in its own courts, the State based its case on an insistence that a driver who declines to submit to testing after being arrested for driving under the influence of alcohol is always subject to a nonconsensual blood test without any precondition for a warrant. That is incorrect.” *Id.* at 1568 (Sotomayor, J., joined by Scalia, Kennedy, Ginsburg, and Kagan, JJ.).

McNeely is not the only case requiring the narrowing of Idaho’s implied consent law. Many of Idaho’s implied consent cases rely upon *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), which held that the voluntariness of consent must be based upon the totality of the circumstances. The U.S. Supreme Court ruled that there is “no talismanic definition of ‘voluntariness.’” *Id.* at 224. No “single controlling criterion” exists to establish a *per se* consent exception, but rather there must always to be a “careful scrutiny of all the surrounding circumstances.” *Id.* at 226. Irrevocable implied consent, to the extent that it

serves as a talisman to provide a *per se* end run around the warrant requirement, is erroneous, not only under *McNeely*, but also under a careful reading of *Schneckloth*.

In this case, the State relies solely upon implied consent to justify the blood draw. It is the State's position that irrevocable implied consent applies to every driver in the state of Idaho, and acts to authorize warrantless blood draws merely upon a showing of reasonable suspicion. The State argues that when a driver refuses to submit, in addition to all the civil penalties set forth in I.C. § 18-8002, blood may be drawn despite his refusal, and the test results may be used in a subsequent criminal prosecution. All this would purportedly be done without the intervening process of procuring a warrant from a neutral magistrate.

The State's argument is unsound: To adopt the scheme proposed by the State threatens to make the Fourth Amendment and Article I, § 17 nullities in Idaho. Every driver, indeed any person *in physical control* of a vehicle, would potentially be subject to the invasion of their bodily integrity by a hypodermic needle merely upon a showing of reasonable suspicion. The legal fiction of implied consent in Idaho would, as a conclusive matter of law, preclude any driver from being secure in his person against a blood draw, notwithstanding persistent refusals.

Neither the legislature nor the courts of Idaho have the authority to suspend the Fourth Amendment and Article I, § 17 by imposing irrevocable

implied consent in criminal cases. To acknowledge such power would essentially render our constitutions meaningless. The Legislature (or the courts) could just as easily imply irrevocable consent to a warrantless search of a car, simply as a prerequisite to driving on a public road. Or they could imply irrevocable consent to religious instruction at schools because parents enrolled their children in the public educational system. The irrevocable implied consent mechanism could be used to circumvent virtually all constitutional protections.

Implied consent cannot overcome the protections against unreasonable searches provided by the Fourth Amendment or Article I, § 17. A driver who declines to submit to testing after being arrested for driving under the influence of alcohol is subject to *civil* penalties such as a civil fine and an administrative license suspension. While Idaho Code § 18-8002 allows for civil penalties, it is a nullity when it comes to warrantless searches. In order to draw blood from a driver suspected of driving under the influence, a warrant is required, or some exception to the warrant requirement must be shown. Implied consent, as a basis to circumvent the constitutions of the United States of America and the State of Idaho, has been shown to be nothing more than a fiction. Judge Judge did not err in suppressing the blood draw evidence. As a result, the decision of the Magistrate

Judge, in suppressing the results of the warrantless search, is AFFIRMED.

Dated this 31st day of October 2013.

A handwritten signature in black ink, appearing to read "John R. Stegner", written over a horizontal line.

John R. Stegner
District Judge

CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete, and correct copies of the foregoing order were delivered to:

Douglas D. Phelps
Attorney at Law
2903 N. Strout Rd.
Spokane, WA 99206-0802

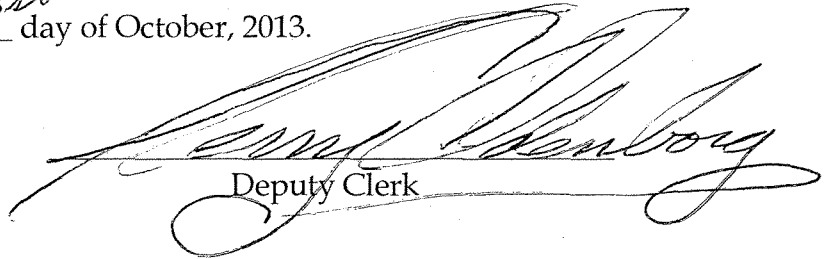
☐ U.S. Mail
☐ Overnight Mail
☒ ~~Fax~~ *email*
☐ Hand Delivery

Michael Cavanagh
Deputy Prosecuting Attorney
P.O. Box 8069
Moscow, ID 83843

☐ U.S. Mail
☐ Overnight Mail
☒ ~~Fax~~ *email*
☐ Hand Delivery

Judge John C. Fudge
Magistrate

On this 31st day of October, 2013.


Deputy Clerk

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Idaho State Bar # 4051
Deputy Attorney General
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Boise, Idaho 83720-0010
(208) 334-4534

CASE NO. CR-12-4156

2013 NOV 18 PM 1:21

CLERK OF DISTRICT COURT
LATAH COUNTY
BY Re DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR LATAH COUNTY

STATE OF IDAHO)	
)	
Plaintiff-Appellant,	)	District Court No. CR-2012-4156
	)	Supreme Court No.
vs.)	
	)	NOTICE OF APPEAL
DEREK MICHAEL ARROTTA,)	
)	
Defendant-Respondent.)	
)	

TO: DEREK MICHAEL ARROTTA, THE ABOVE-NAMED
RESPONDENT, DOUGLAS D. PHELPS, PHELPS & ASSOCIATES, 2903 N.
STROUT RD, SPOKANE, WA 99206-0802 AND THE CLERK OF THE ABOVE-
ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the
above-named respondent to the Idaho Supreme Court from the MEMORANDUM

OPINION, entered in the above-entitled action on the 31st day of October, 2013, the Honorable John R. Stegner presiding.

2. The appellant has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule 11(c)(10).

3. Preliminary statement of the issue on appeal: Did the district court err by upholding the magistrate's order suppressing evidence of a blood draw conducted pursuant to implied consent?

4. To undersigned's knowledge, no part of the record has been sealed.

5. Appellant requests that the already prepared transcript of proceedings before Magistrate John C. Judge on June 6, 2013 be included in the record as an exhibit. Appellant requests no additional transcripts at this time.

6. Appellant requests the normal clerk's record pursuant to Rule 28, I.A.R.

7. I certify:

(a) A copy of this notice of appeal is being served on each reporter of whom a transcript has been requested as named below at the address set out below:

SHERYL L. ENGLER
Court Reporter
Latah County Courthouse
PO Box 8068
Moscow, ID 83843

(b) Arrangements have been made with the Latah County Prosecuting Attorney who will be responsible for paying for the reporter's transcript;

(c) The appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);

(d) There is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(e) Service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 18th day of November, 2013.



KENNETH K. JORGENSEN
Deputy Attorney General
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 18th day of November, 2013, caused a true and correct copy of the attached NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

THE HONORABLE JOHN R. STEGNER
Latah County Courthouse
PO Box 8068
Moscow, ID 83843

THE HONORABLE JOHN C. JUDGE
Latah County Courthouse
PO Box 8068
Moscow, ID 83843

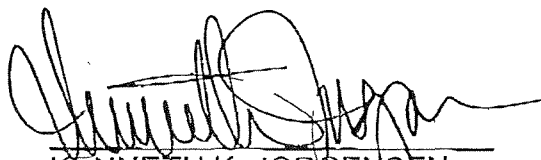
MICHAEL CAVANAGH
Latah County Prosecutor's Office
PO Box 8068
Moscow, ID 83843

DOUGLAS D. PHELPS
Phelps & Associates
2903 North Stout Road
Spokane, WA 99206

SHERYL L. ENGLER
Court Reporter
Latah County Courthouse
PO Box 8068
Moscow, ID 83843

HAND DELIVERY

MR. STEPHEN W. KENYON
CLERK OF THE COURTS
P.O. Box 83720
Boise, Idaho 83720-0101


KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/pm

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
	)	Supreme Court No. 41632-2013
Plaintiff-Appellant,)	
	)	CLERK'S CERTIFICATE
vs.	)	RE: EXHIBITS
)	
DEREK MICHAEL ARROTTA,)	
)	
Defendant-Respondent.)	
_____)	

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that the following EXHIBITS:

MOTION TO SUPPRESS (6/6/13)

DEFENDANT'S EXHIBITS:

#A - Notice of Suspension for Failure of Evidentiary Testing - Admitted

AND FURTHER that the transcript of the Suppression Hearing held on June 6, 2013, will be lodged as exhibits as provided by Rule 31(a)(3), IAR.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 6th day of January, 2014.

Susan R. Petersen, Clerk of the
District Court, Latah County, ID

By Ranae Converse
Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
	)	Supreme Court Case No. 41632-2013
Plaintiff-Appellant,)	
	)	CLERK'S CERTIFICATE
v.)	
)	
DEREK MICHAEL ARROTTA,)	
)	
Defendant-Respondent.)	
_____)	

I, Ranac Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that the above and foregoing transcript in the above entitled cause was compiled and bound under my direction as, and is a true, full, complete and correct transcript of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that all exhibits, offered or admitted in the above entitled cause will be duly lodged with the Clerk of the Supreme Court along with the court reporter's transcript and the clerk's record, as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 6th day of January 2014

Susan R. Petersen, Clerk of the
District Court, Latah County, ID

By Ranac Converse
Deputy Clerk

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